The Message in the Bottle: The Life and Letters of Tom Fowler

By Mark Rabil

Editor's Note: Tom Fowler, Associate Counsel to the Administrative Office of the Courts—the adviser to the state's trial judges, a regular contributor to this Journal, *and a member of the* Journal's *editorial board for the last several years—died unexpectedly on May 21, 2004, at age 49. He suggested numerous topics for articles, solicited contributions from new voices, wrote a number of articles himself, and worked many hours in improving the quality of the* Journal. *It will be difficult, if not impossible, to replace him. Because of his tireless efforts on behalf of the* Journal, *we thought it appropriate to print this memorial.*

On tax day 1987, Tom Fowler called to tell me that our other law school friend and fellow traveler, Tom Bostian, died the previous night. We used last names with each other to avoid confusion with the "two Toms," who shared a birthday. Bostian suffered a heart attack. On tax day 2004, I enjoyed my last lunch with Tom Fowler at the 42nd Street Oyster Bar in Raleigh. Five weeks later, Fowler's law partner from the 1980's, Paul Baldasare, called to tell me that Tom had died the night before.

Photo courtesy of Michael J. Dayton

Death and taxes reared their ugly heads as two of the certainties of life. But Tom taught me about another greater certainty: The certainty that our stories will, and must be, told. Tom's stories will live on to inspire me, and I'm sure will guide and comfort his sons, Grant and David, as they travel the same roads as their father. Tom's life is a lesson for us all, especially for practicing attorneys. This is because our journeys intersect with our clients' journeys, and we are their storytellers. We, as attorneys, must ensure that the editorial rules for the telling of these stories—that is, the Law—are followed. It is not the end result in life or in law that matters. As attorneys, we must enforce the rule that the story is told fairly. We then hope that the story ends well.

To me, Tom Fowler was a modern-day Socrates, a true skeptic, the best questioner I ever knew. I never felt more uncomfortable than when trying to debate him. Lawyer ancestors run deep in his Kentucky roots, but I could see the strong influence of a physics professor, his father, Dr. Earle Fowler. For Tom, the scientific method had to be applied. Tom would let no one escape scrutiny. If our appellate courts created more questions than answers, or were unclear in their opinions, or were inconsistent, Tom was there to write about it.

The titles to some of his law review articles tell all: "Of Moons, Thongs, Holdings and Dicta: State v. Fly and the Rule of Law," 22 Campbell L.Rev. 253 (2000); "Holding, Dictum...Whatever," 25 N.C.Cent.L.J. 139 (2003); "Law Between the Lines," 25 Campbell L.Rev. 151 (2001); "Navigating Custody Waters Without a Polar Star: Third-Party Custody Proceedings After Petersen v. Rogers and Price v. Howard," 76 N.C.L.Rev. 2145 (1998); "Functus Officio: Authority of the Trial Court After Notice of Appeal," 81 N.C.L.Rev. 2331 (2003). Nothing was above scrutiny, not even the law

reviews for which he wrote—for example: "Law Reviews and Their Relevance to Modern Legal Problems," 24 Campbell L.Rev. 47 (2001) He wrote that law reviews exist to be written, not to be read and cited.

I always enjoyed his presentations at the annual UNC School of Law symposium, where Tom would give his latest criticisms of the appellate courts. I never saw him flinch, even when Supreme Court justices were in the room (nor did any of the justices, whom I was watching out of the corner of my eye). Tom was always there to call the question, to make sure the rules of our storytelling were enforced consistently and reasonably.

I am sure our trial judges will miss him. I have heard many judges remark on his ability to answer quickly hard questions in all types of cases, from capital to contract. It was remarkable that he could accurately tell the courts what the law is, not what he thought it should be. Unbeknownst to both of us, I was the unfortunate recipient of his (correct) legal advice to several judges who called Tom for help in the middle of trial.

When we met at UNC Law School in the late 1970's, Tom already had developed his unique approach to life. He lived without expectations, but with the belief that he would be amazed on occasion. His approach would be encapsulated best by the story of the message in the bottle, a life metaphor he learned from the writer Walker Percy. The desert island survivor keeps placing notes in bottles, which he tosses in the ocean without expecting that anyone will ever retrieve them. Tom constantly and meticulously, with humor and reason, wrote these letters, sealed them in bottles, and tossed them into the vast waves of the universe, without expectation, but with hope that he would be amazed at any echo. This writing is one of the echoes.

Tom was my friend of 27 years, a polestar of consistency and reason, and a mentor who encouraged me to live the good journey. Most importantly, he taught me to travel—to places both real and imagined, with adequate planning and without expectation, and to be ready to be amazed. "The readiness is all," in the words of Hamlet. The journey, however, according to Tom, is not complete until the story is told.

Tom and I snorkeled in the Florida Keys, explored the Everglades, dined in the Coconut Grove, hiked Newark, New Jersey, surveyed Manhattan from atop the World Trade Center, biked the San Juan Islands, ran from Beach Mountain up the side of Grandfather Mountain and along the crest and back, and climbed Mount Rainer. Along the way, we made many discoveries about ourselves, about life, about the outer limits of our bodies. Tom never stopped. He ran marathons, biathlons, and triathlons, until his knee gave out. Then he swam. All the while, he was participating in the greater journey and learning.

What all these trips, runs, races, and challenges had in common was place. "Place" in the sense of creation, something of which we should be in awe, and something which is in need of, in Tom's words, "recovery".

Each of us has a place where time stops, memories awaken, and we take measure of ourselves. For me, it's the spot just before the swing bridge to Sunset Beach, NC. That bridge may be replaced soon, but it will always be, in my mind, the place where I think ahead to a week of runs on the beach, nods from the pelicans, starry nights, meteor showers, visions. It is also a place, a spot in time where, as I drive off the island with the week behind me, I think back to that moment when I was entering the island with the week ahead of me. Such places become sacred once our imagination melds the location with memories and anticipation. To be sacred, a place does not have to be a temple in Jerusalem, a mosque in Mecca, or a chapel in Vatican City. Any river, hill, mountain, or tower can be sacred. In sacred places, we meet God in his creation—on the trail, in the reef. Sacred places are the union of time and geography into cells where poetry is made and stories crystallize.

Although he would shun the term "sacred," Tom Fowler had a place similar to my bridge: the firetower on Flat Top Mountain. At CarolinaJourneys.com, a website on which he published numerous articles about places, "both real and imagined," he wrote:

> Since the late 1970's, at regular three or four year intervals, I find myself standing at the top of the firetower on Flat Top Mountain, taking stock of what I've done and what I want to do in this life. Sometimes it's winter and I've cross-country skied to the top. Sometimes it's summer and I've jogged the trail to the tower—sometimes I've just walked it. I always stand at the top, hands on the rail, and slowly scan the 360 degree view, from Grandfather Mountain to the west and the town of Blowing Rock to the south. I stay there long enough—I'm usually there all by myself—until I compose, and say out loud, what I call a "Flat Top Firetower Statement." The statement is always about what I'll get done before I next climb the carriage trail up to Flat Top Mountain and stand atop the firetower. And maybe I don't really say it out loud—but it always feels like I do.[1]

For Tom, place was everything, for everything comes together in places, such as the firetower, the Angel Oak, the Washington Oak, the Great Indian Trading Path, the Shut In Trail, the Sauratown Mountains, Faith Rock, or Judaculla Rock. The Judaculla Rock is a large rock in Jackson County and contains numerous "[p]etroglyphs [which] are inscriptions or carvings on naturally occurring rock faces."[2] Native Americans made the inscriptions, and I am sure they fascinated Tom as ancient "messages in the bottle." On the website, Tom gives detailed directions on how to find Judaculla Rock and other locations in the Carolinas, but he leaves much to the imagination. He tried to encourage his readers to "regain sovereignty over their experience."[3]

We should not simply be "sightseers" and rely on travel books to tell us what to see. Rather, we should directly experience places. Tom described his mission as follows:

> The novelist Walker Percy thought about this effect of expectation upon perception. He described it as surrendering sovereignty over the experience to the expert—or at least to someone else who will evaluate your experience for you even before you experience it. In *The Message in the Bottle*, Percy considered a man from Boston who decides to vacation at the Grand Canyon. He visits his travel agent, looks at all the pamphlets and signs up for a tour of the Canyon. Percy believed this man would find it impossible upon arriving at the Bright Angel Lodge, to gaze directly at the Grand Canyon and see it for what it is. Impossible because, for this man, the Canyon would have been "appropriated by the symbolic complex which has already been formed in the sightseer's mind. Seeing the canyon under approved circumstances is seeing the symbolic complex head on. The thing is no longer the thing as . . . confronted . . . ; it is rather that which has already been formulated—by picture postcards, geographic book, tourist folders, and the words Grand Canyon. . . . The highest point, the term of the sightseer's satisfaction, is not the sovereign discovery of the thing before him; it is rather the measuring

up of the thing to the criterion of the preformed symbolic complex." Percy's thesis may help explain why for some of us there is something dissatisfying about visiting the well-known tourist destinations in the Carolinas. These sites may be too well interpreted and packaged for us by those who know better than us. All we need do, indeed all we are implicitly allowed to do, is to follow the excellent directions to the site, view the site by following the walking tour, and compare what we've seen to what we were expecting to see. There is nothing to be discovered, nothing to be explored, nothing to be figured out. It's all been done for us. … Little in the Carolinas remains to be discovered, but much continues to be quite beautiful—if we can regain the ability to see it for what it is. CarolinaJourneys is in the recovery business.[4]

As part of the "recovery business," Tom would take a time and place and transform it into an historical event in which he participates. Read his "Hellespont Dreams," in which Tom challenges Lord Byron to a swim race from Europe to Asia, all the while swimming in the pool at Pullen Park in Raleigh 190 years later. But in that story of what happened to him during that morning swim, history, memory, and place transform into something new. The pool is no longer the pool at Pullen Park in 2003, but instead is "the waters of the Dardanelles Straits" [also know as "the Hellespont"] in the 19th century.

Tom realized that William Blake was correct in seeing the universe in a grain of sand and eternity in an hour. Listen to Tom:

So, it's now a little after 10:00 a.m. on May 3, 2000. It is 190 years to the day, to the hour, and even to the minute that George Gordon Byron, Lord Byron to his admirers and imitators, waded into the waters of the Dardanelles Straits, to swim from Europe to Asia. I also am dangling my toes in the same murky, roiling waters, Speedo and goggles on, ready to follow in Byron's footsteps—well, okay, I guess more in his wake, actually. I empty my mind of twentieth century cares, silently recite my favorite Byronic stanzas, and slip into the chilly water and begin to stroke for Asia—visible as only a dark margin along the horizon where the water seems to merge into the haze. Well, okay, to be precise, I can't actually see Asia and the water isn't actually all that chilly or murky and roiling. And it's only really the same water in the sense that all water is water, after all. I'm actually in the pool at the Pullen Aquatic Center in Raleigh, North Carolina, and I'm making my first flip turn. There. I push off, glide and come up for air. One lap down, 140 or so to go. You know I don't have the time or the money to go to Turkey and do the actual swim. I've got no hereditary estate like Lord Byron did in 1810. I've got a day job. And besides the Dardanelles is supposed to be so horribly polluted these days that no sane distance swimmer would be caught dead in it (so to speak). But still, it's the right time (if not the right place), it's the right distance, it's water, and I'm in the proper Byronic frame of mind. So let's call it the Hellespont, okay? Work with me here. I do another flip turn, much as Byron himself would have done had he trained in an Olympic size pool like Pullen. I can sense the great continent of Asia drawing nearer. I'm making good time.

Byron considered himself an accomplished distance swimmer. In 1810, at the age of 22 and on his way to Istanbul (then Constantinople), Byron challenged Lieutenant Ekenhead (an officer of the ship on which Byron sailed) to a swimming race across the Hellespont (now called the Dardanelles). Swimming the Hellespont also appealed to Byron because of the Greek legend that Leander swan the Hellespont nightly to met his lover, Hero, a priestess of Aphrodite who lived on the other side and had to be visited in secret (Note: after each of these assignations Leander presumably re-entered the chilly water and swam back to Asia; like Byron, I concluded that a one-way Hellespont paddle was sufficient challenge; according to legend Leander did ultimately stop his nightly round trip swims after he drowned one night on one of the legs.). Byron finished the swim in an hour and ten minutes but Ekenhead finished in an hour and five minutes. On the day of the swim, Byron wrote that the distance "is not above a mile but the current renders it hazardous, so much so, that I doubt whether Leander's conjugal powers must not have been exhausted in his passage to Paradise." Byron was very proud of his swim (he is said to have never allowed his friends or the public to forget about the accomplishment), and the achievement apparently grew in his mind as he recollected it. Several weeks after the event Byron wrote: "The whole distance Ekenhead and myself swum was more than four miles, the current very strong and cold, some large fish near us when half across, we were not fatigued but a little chilled. Did it with difficulty." So was it a mile or a four mile swim?

I'm about a mile into my swim across the Hellespont. I think I'm about half way so I look for the large fish but see none. A couple of large lap swimmers slide by in the adjoining lanes. From the looks of them, they will never make it to Asia. I keep stroking, having hit my stride . . . uh, I mean my . . . uh, stroke. I'm swimming freestyle—the old Australian crawl—and in an hour and ten minutes I expect to cover about two miles or about 140 laps in the pool. I figure that must be about the distance Byron covered—not including the distance he was pushed by the current. In 1810 there was no Australian crawl. Byron and Ekenhead swam breaststroke all the way across the Hellespont. They may have been strong breaststrokers but they did not breaststroke four miles in 70 and 65 minutes respectively. I'm thinking my freestyle is about as fast as Byron's breaststroke. I'm doing flip turns after all and freestyle is acknowledged to be the fastest of the strokes. But I don't want to stop short of the Asian shore and drown. So I guess I'd better swim at least an hour and fifteen minutes and maybe do two and a quarter miles. I'm still looking for those big fish.

At a mile and a half I feel pretty good and decide to increase the effort and try to catch Lieutenant Ekenhead. I can make out his head bobbing about a hundred yards ahead of me. But the effort proves a bit much. I decide that it would fit the spirit of the swim if I do a few laps of breaststroke. Then I decide that Byron probably also threw in some backstroke so he could meditate on the sky and savor the moment. So I do some backstroke and watch the ceiling of Pullen Aquatic Center move stately by. I'm slowing down but I switch back to freestyle and make two miles at an hour and fifteen minutes. Five minutes later I touch sand with the fingers of my stroking hand. Asia, at last! I gather my legs up under me and stand in the thigh deep water. Pulling my goggles up to my forehead, I walk stiffly out of the Hellespont and onto the Turkish shore. As the waters of the Bosporus drip off my body, I turn to

look back across the strait toward Europe. As I gaze across the murky, roiling water, I dip my head slightly in mute salute to and acknowledgment of Leander, Lieutenant Ekenhead, and, of course, Lord Byron himself. Then I turn to the lifeguard who is looking at me curiously. There are no other lap swimmers left in the pool. "All done," I say, smiling and realizing that the lifeguard hadn't been on the stand when I'd started swimming so he couldn't know where I'd started from or just how far I'd come. And I won't tell him. I turn away, put my arm on Byron's shoulder and walk with him to the showers.[6]

Tom's vision in "Hellespont Dreams," was Cubist because he, like Picasso, painted with simultaneity. Tom saw on many levels at the same time. A good Catholic would see that Tom's vision is not that different from the doctrine of transubstantiation—the bread and wine in communion is transformed into God's presence, but we still also see and partake of the bread and wine. Again, Tom would shun the religious analogy, but I believe his vision of participating in the many levels of creation was more religious than most people.

Tom trained me to run long distance, through forests, up mountains, in road races. Tom loved a good hill, and his excitement at the prospect of a long steep climb, such as Laurel Hill near the law school in Chapel Hill, still survives in me. Each time I approach the bottom of Reynolda Road and head up the hill to Reynolda Gardens in Winston-Salem, I hear his chuckle and his voice—"Ah, look at that hill, let's go." Tom learned to see with greater simultaneity due, in large part, to knee injury. He could no longer run as far and as fast, and he switched to swimming, which brought him a new viewpoint. I'm sure it bothered him that he could not swim uphill.

However, Tom learned from his injury, as we all should learn from our injuries, illnesses, losses, and tragedies. Tom learned to see that he swims, moves, walks, travels, envisions, and writes in the footsteps of his heroes. The mode of travel did not matter as much as how he viewed his path.

Lawyers less literate than my friend also walk in the footsteps of heroes. We only have to open our eyes to see ourselves participating in the legends. When we leave our cramped offices and march to the courthouse to do battle, we go with Agamemnon, Achilles, Lee, McArthur, or King, or with lawyer ideals such as Atticus Finch or Clarence Darrow. When we fight for many years for clients whose stories were never properly told, we ride with Quixote and joust with giants ("real or imagined"); or we sail perilously with Ahab after the whale. We find strength and warnings in these stories. We are ennobled, and we learn.

Tom encouraged me to write. Last year, he cajoled me into writing an article for the Winter 2003 issue of this *Journal*. Tom edited my poetry. He agreed to edit my book—the one I've been talking about for nearly 20 years. On Halloween 2003 he e-mailed me and encouraged me to write about "the remarkable interwovenness of your development as a lawyer with the ins and outs of Darryl [Hunt]'s trials, appeals, etc. over the many years...." Now I must write this book about my journey representing Darryl Hunt, finally exonerated by DNA evidence after 20 years—with Fowler as my internal editor.

Tom introduced me to the cyber world several years ago. Scarcely a week has gone by when we did not e-mail each other about running, running injuries, trying to run, getting

fat, diets, writing, strange opinions from the courts, plans for the next annual hike with law school roommates Reid Russell and Garry Ballenger, or meeting for lunch on my next trip to Raleigh. Since he died, I toy with the idea of e-mailing Tom, and I expect to be amazed at the response.

At Tom's funeral, a story from Mark Twain's *Tom Sawyer* echoed through my mind. I had this feeling that Tom was not really dead. I felt like he and I were in the gallery watching his fake funeral, *a la* Tom and Huck. Perhaps Tom was not really dead, that this was a case of mistaken identification. And I'm not sure how Fowler arranged this, but there was a case of mistaken identification at the funeral. (I should have realized something was amiss when I saw Ty Hunter sitting in the choir: I know Ty Hunter. He is no choirboy. He was just sitting there as part of the overflow congregation.)

My parents joined me at the funeral, as Tom was a frequent guest at their home during the law school days and he was a groomsman in my weddings. My brother Vince wanted to join us, but he was prosecuting a murder trial in Winston-Salem. My parents insisted that they saw brother Vince at the funeral, sitting in the choir, facing the people, behind the minister and to his right. I did not see him there, possibly because the pulpit blocked my view—and I sat on the opposite side from them with the pallbearers.

My parents described how Vince left through the side door, presumably to hurry back to Winston-Salem to continue with his murder trial. I told them I would not believe Vince had been there unless they could produce DNA evidence. Mom called Vince from the restaurant where we had lunch. When she reached him, I could tell that he said he was having lunch because she turned to look around as if he might be in the same restaurant in Bright Leaf Square. I thought maybe he was eating at one of the restaurants nearby, and I started to feel stupid for not recognizing my own brother sitting in front of me at the funeral for an hour. However, Vince told my mother that he was sitting at his desk in his office in Winston-Salem having lunch and preparing for the afternoon session. He had been in trial all morning. Even if he didn't arrange it, Tom would have appreciated this unexpected story of mistaken identification.

There are only a few friends with whom we sit and converse about the afterlife. For me, Tom was one of those people. In the summer of 1983, we flew to Seattle with our bikes, met up with one of my college buddies (Carlton Scott Cooke—who has used up seven of his nine lives, but that's another story), and one of our law school friends, Chris Moore. Fowler, Carlton (known as "Scott" to everyone but me, but that's another story too), and I biked from Chris' house to the ferry, which took us to Victoria, Canada, and on to the San Juan Islands, where we biked and camped for a week or so. On the last day, we biked over 100 miles back to Seattle, only to find out that Carlton's father, Arthur Cooke, a well-known Greensboro lawyer, had died that day. We took Carlton to the airport for a midnight flight, and the next day Tom and I set out to the Olympic Mountains. One night we stayed at a logging trucker motel. Over dinner, I asked Tom, "What do you really think happens when we die?" He replied, "That's it." He said something like your energy is re-absorbed into the universe. I told him I suspected that was right, but had a hard time believing it. It's just hard for me to give up believing in the individuality of the soul.

When I got the bad news about Tom's death on that Friday, May 20, 2004, I knew that I had to run through Reynolda Gardens in his honor. That's the "place" where I ran after our mutual friend Tom Bostian died. It's where I took the last walks with our other classmate, my first wife Pam, and it's where I ran after she died of cancer in 1993. There is comfort there for me in this place, the gardens. I do not feel alone. Sad, yes, but not alone. The energy of these three loved ones propels me. I hear them and see them in my mind's eye. Bostian laughs and inspires me to intensely enjoy every moment. Pam whispers to me to share my love for her and not be crippled by grief. And, now, the third partner in the trinity, Tom Fowler, encourages to me to tell this and other stories—for it is only in telling our stories to our children and others that we learn.

Within hours of Tom's death, I realized that I needed to spend more time with my wife Judy and my three children. I was comforted to know that Tom did spend a great deal of time with his wife, Gail, and his two sons, traveling to China, to as many of the highest points in each of the states as he could, and to many places around the country in search of elusive petrographs. I was shocked to realize that, unlike Tom, I had not taken a week's vacation, uninterrupted by a convention, seminar, or thoughts of work, in nearly two years. I even missed most of last Christmas, traveling back to North Carolina from Syracuse, New York, to secure the release of my client Darryl Hunt.

To start my new path with my family, I took my six year old, Jacob, to the mountains. On the first day, we hiked to Linville Falls, where Pam and the Toms and I hiked a few times in the early 1980's. Jake led the way, buzzing from one lookout to the next, not at all fearful of falling or of snakes. As we returned to the bridge near the parking lot, some hikers approached. The older one said, "Look out, there's a couple of ghosts around the bend." I thought, I know what they look like. Not exactly an e-mail, but still a message in the bottle.

In 1994, I called Tom from my car over the speakerphone. We were discussing various important issues when I drove past the Krispy Kreme "home office" on Stratford Road, and I saw the neon "Hot Now" sign flashing. I decided I needed a hot glazed doughnut and a cup of coffee. I went to the drive-through and ordered. When they asked if there would be anything else, Tom piped in, over the speakerphone, that he wanted a cup of coffee and two glazed. The sales clerk would not take "no" for an answer, and I ended up paying for three "Hot Nows" and two coffees.

So now, Tom, when I pass through the Krispy Kreme drive-through once every three or four years (assuming I stay on the new diet), I'll have a "Hot Now" for you, and I'll say out loud, my "Hot Now Statement," just as you made your "Flat Top Firetower Statements," and I will tell you where I've been, and where I'm going. ■

Since May 2003 Mark Rabil has been working as an assistant capital defender, Forsyth Regional Office, representing clients facing the possibility of the death penalty at the trial level. He graduated from UNC School of Law in 1980.

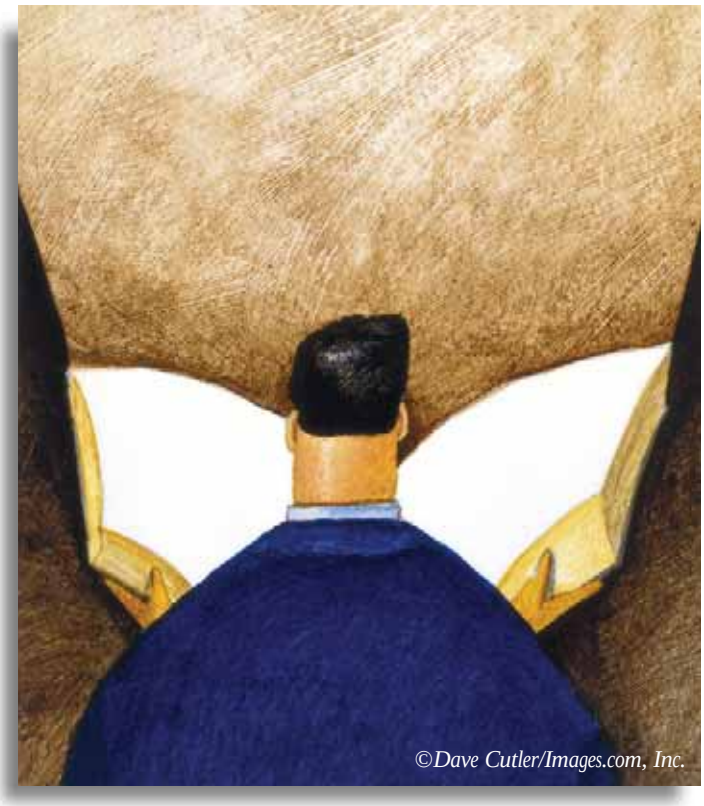
Endnotes

1. Fowler, Tom, "The View from the Firetower on Flat Top Mountain," carolinajourneys.com (2002).
2. Fowler, Tom, "Judaculla Rock," carolinajourneys.com (2001).
3. Fowler, Tom, "Welcome From the Editor," carolinajourneys.com (2001).
4. Id.
5. Fowler, Tom, "Hellespont Dreams: Cross-Training with Lord Byron," CarolinaJourneys.com (2001), The Urban Hiker, June, 2000.
6. Id.

The Potential Impact of Lawrence v. Texas on North Carolina Criminal (and Tort) Law

By Alan D. Woodlief Jr.

One of the most significant decisions handed down by the United States Supreme Court in 2003 was Lawrence v. Texas.[1] Over a year after this decision was issued, courts, legislatures, and legal scholars are still sorting out the implications of the decision on social issues, such as whether homosexuals should have the right to marry[2] or adopt children,[3] and on criminal law issues, such as what sexual conduct, engaged in by homosexuals and heterosexuals, may be criminalized by the states.



This article will focus primarily on the criminal law issues raised by *Lawrence* and will leave for another article its potential impact on social issues, such as the right to marry or adopt. First, the article will briefly summarize the holding and some of the critical legal analysis from the *Lawrence* decision. It will then discuss how several North Carolina criminal offenses may be impacted by the decision. Finally, the article will address whether the *Lawrence* decision calls into question, at least implicitly, the continued vitality of North Carolina's "heart balm" causes of action, alienation of affection and criminal conversation.

The *Lawrence* Decision

In *Lawrence*, the "question before the Court [was] the validity of a Texas statute making it a crime for two persons of the same sex to engage in certain intimate sexual conduct."[4] The criminal defendants in that case were adults at the time of the alleged offense, and their conduct was in private and consensual.[5] Given the factual scenario, the Court concluded that "the case should be resolved by determining whether the petitioners were free as adults to engage in private conduct in the exercise of their liberty under the Due Process Clause of the Fourteenth Amendment to the Constitution."[6]

While the Court stopped short of concluding that homosexual sodomy or the right to private sexual intimacy constitutes a fundamental right,[7] it did conclude that the defendants' "right to liberty under the Due Process Clause [gave] them the full right to engage in their conduct without intervention of the government."[8] The Court also determined that "[t]he Texas statute further[ed] no legitimate state interest which [could] justify its intrusion into the personal and private life of the individual."[9]

North Carolina's Crime Against Nature Offense

North Carolina does not have a separate sodomy statute. Rather, sodomy and certain other sexual activities fall within the crime against nature offense.[10] The statute provides: "If any person shall commit the crime against nature, with mankind or beast, he shall be punished as a Class I felon."

Given the *Lawrence* decision, it is clear that the State of North Carolina cannot prosecute crime against nature when adults of the same sex engage in private, consensual sodomy. It is also clear that the State cannot prosecute adults of the opposite sex, or heterosexuals, from engaging in the same private, consensual act. However, it can be gleaned from several of the Court's statements that the ruling does not bar the prosecution of crime against nature when: (1) one of the consenting participants is a minor; (2) one of the participants is an adult who is mentally disabled, incapacitated, or physically helpless, so as to be incapable of effectively consenting; (3) one of the participants offers to commit or commits the sex act for money or other valuable consideration; (4) the sex act is not committed in a private residence or other private place; or (5) one of the participants to the sex act is coerced into committing the act.[11]

In April 2003, a bill was introduced in the North Carolina Senate to amend N.C. Gen. Stat. § 14-177 to remove the reference to "with mankind," thus limiting the statute's scope to crime against nature involving beasts.[12] This amendment would codify the holding of *Lawrence* that the State cannot prosecute crime against nature when homosexual or heterosexual adults engage in private, consensual sodomy. In fact, it would go beyond the holding in *Lawrence* since it would eliminate all crime against nature committed by two people, rather than a person and an animal. Presumably, the drafters of the bill are satisfied that the situations enumerated in the previous paragraph, where crime against nature involving two people is not constitutionally protected, are covered by other existing crimes, such as statutory rape and indecent liberties with a minor, rape and other sexual offenses, and prostitution. Another potential amendment to the existing statute would be to leave the reference to "mankind" but also to specifically exclude from the statute's reach private conduct between two consenting adults of the same or opposite sex.

Other Sexual Crimes: Bestiality, Incest, Prostitution, and Obscenity

In his dissent in *Lawrence*, Justice Scalia, joined by Chief Justice Rehnquist and Justice Thomas, lamented that the majority opinion called into question "[s]tate laws against bigamy, same-sex marriage, adult incest, prostitution, masturbation, adultery, fornication, bestiality, and obscenity" since they, like sodomy laws, are "sustainable only in light of *Bowers*' prior validation of laws based on moral choices."[13] Even though the majority in *Lawrence* does speak in sweeping terms about adults possessing "a realm of personal liberty which the government may not enter,"[14] it is doubtful, however, that any court or legislature would legalize, or decriminalize, incest, prostitution, bestiality, or obscenity, whether they involved homosexual or heterosexual actors. As mentioned in the preceding section, even the majority in *Lawrence* noted that there are limitations on this liberty and that laws designed to prohibit public sex acts, sex acts which involve minors or those who cannot effectively give consent, sex acts involving coercion, and prostitution would be justified.[15]

While the North Carolina legislature is considering amending the crime against nature statute, these amendments would leave in place the prohibition against crime against nature with a beast.[16] This prohibition against bestiality would almost certainly withstand constitutional challenges given the State's interest in preserving the public health, or even on a cruelty to animals basis.[17]

Laws against prostitution, such as N.C. Gen. Stat. § 14-204(5), would also almost certainly withstand constitutional challenge, since such prohibitions were mentioned in *Lawrence* and implicitly approved.[18] These prohibitions could be justified on the grounds that prostitution is coercive and exploitive of women and poses a public health concern.[19]

It is clear that *Lawrence* would have no impact on incest prosecutions involving victims who are minors or those who cannot effectively give consent.[20] However, as noted by Justice Scalia in his dissent, the majority opinion may call into question the enforcement of incest laws where consensual sex between adults is involved.[21] Still, at least one court has distinguished the reasoning of *Lawrence* and concluded that a state has a legitimate interest in preventing incest: protecting the family unit.[22] It has also been noted that prohibitions against adult incest could be justified by a state's "desire to avoid genetically disadvantaged offspring" and "the desire to avoid the corruption of parent-child relationships."[23] Accordingly, laws against incest, including adult incest, such as N.C. Gen. Stat. § 14-178, would likely withstand a constitutional challenge under *Lawrence*.

The constitutionality of most obscenity statutes will most likely continue to be determined applying First Amendment principles.[24] Undoubtedly, *Lawrence* would have no impact on obscenity laws aimed at protecting children.[25] *Lawrence* might cast some doubt on a statute banning the private possession of obscenity. However, the various North Carolina obscenity statutes deal with minors[26] or the creation for dissemination, dissemination, and advertisement of obscenity.[27] The rationale of *Lawrence* would appear to have little applicability to these statutes.

As demonstrated above, it is doubtful that the *Lawrence* decision will have any real impact on most of North Carolina's so-called "morality crimes," except the crime against nature between two consenting adults in private. Bans on incest, bestiality, prostitution,

and obscenity should all withstand challenges premised on the rationale in *Lawrence*.

Fornication, Adultery, Bigamy, and Bigamous Cohabitation

The constitutionality of statutes barring fornication, adultery, bigamy, and bigamous cohabitation present a more difficult question than the offenses discussed above. Because all of these offenses would criminalize private sexual conduct between consenting, unmarried adults, they tread closer to the constitutional line drawn by the *Lawrence* majority.[28]

N.C. Gen. Stat. § 14-184 prohibits both fornication and adultery.[29] Even before *Lawrence* was decided, courts and commentators had noted that fornication statutes intruded on "constitutionally protected activity."[30] The statute's prohibition of fornication, or sexual relations between two consenting, single adults, would almost certainly be held unconstitutional under *Lawrence*.[31]

The statute's prohibitions on adultery, and the prohibitions against bigamy and bigamist cohabitation in N.C. Gen. Stat. § 14-183, are more likely to survive a constitutional challenge under *Lawrence*. While morality concerns may be one of the motivations behind these laws, the majority in *Lawrence* noted that the right to engage in private, consensual sexual conduct with another adult could be limited where such conduct involved "injury to a person or abuse of an institution the law protects."[32] The act of adultery can be viewed as an abuse of the government-sanctioned institution of marriage. Further, the statutory prohibitions against adultery and bigamy can likely be "justified by a state's desire to preserve a monogamous tradition, protect spouses from harms visited by the other spouse (a longstanding feature of state criminal, marriage, and divorce law), [and] maintain an orderly system for assigning the benefits and burdens associated with marriage."[33] Accordingly, it is unlikely that North Carolina's laws against adultery, bigamy, and bigamous cohabitation will be overturned based on *Lawrence*.

The "Heart Balm" Torts

Adultery's counterparts in the civil law of North Carolina are the "heart balm" torts of alienation of affections and criminal conversation. While most states have abolished these torts, North Carolina still recognizes them,[34] and it is not uncommon to hear of juries awarding injured spouses sizeable compensatory and punitive damage awards. Still, calls for the abolition of these torts continue,[35] and it could be argued that the rationale in *Lawrence*, emphasizing the privacy rights of the individual and an adult individual's right to choose his or her relationships and to make decisions regarding private, consensual sexual conduct with another adult, lends some support to the effort.[36] However, as discussed above with regard to adultery, these claims and judgments premised on them can be justified by the importance of the institution of marriage and various State interests.[37] Accordingly, while the General Assembly or the North Carolina Supreme Court may well decide to abolish these torts, they will not likely be motivated by the constitutional concerns addressed in *Lawrence*.[38]

Conclusion

As courts and scholars wrestle with the implications of the *Lawrence* decision, it is still uncertain what impact the decision will have on the validity of various criminal statutes regulating sexual conduct. As explained above, it is likely that North Carolina's crime against nature offense will be held unconstitutional as it applies to homosexual or heterosexual adults engaging in private, consensual sodomy. In addition, North Carolina's fornication statute will likely be held unconstitutional. However, despite Justice Scalia's concern that all other statutes touching on morality will eventually be overturned, it appears that North Carolina's criminal statutes prohibiting bestiality, incest, prostitution, obscenity, adultery, bigamy, and bigamist cohabitation will survive the *Lawrence* analysis. As these and other laws in North Carolina and across the country are challenged, the true scope of the *Lawrence* decision, and the balance between the states' justifications in regulating sexual conduct and the individual's right to privacy, will be defined. ■

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Endnotes

1. 123 S. Ct. 2472 (2003).

2. While the principles espoused in *Lawrence* may have some application in the continuing debate over the rights of homosexuals to marry, the Court took care to note that the case did "not involve [the issue] whether the government must give formal recognition to any relationship that homosexual persons seek to enter." *Id.* at 2484.

3. *See Lofton v. Secretary of the Dep't of Children and Family Services*, 358 F.3d 804, 817 (11th Cir. 2004) (concluding "that the *Lawrence* decision cannot be extrapolated to create a right to adopt for homosexual persons").

This summer, a proposed constitutional amendment to ban same-sex marriage was considered by the United States Senate but fell short of the support needed. As of the writing of this article, the United States House of Representatives is considering legislation that would bar federal courts from ordering states to recognize same-sex marriages sanctioned in other states. Undoubtedly, the constitutional amendment and other legislation on this issue will continue to be hotly debated through the fall elections and for years to come.

4. 123 S. Ct. at 2475. The statute provided: "A person commits an offense if he engages in deviate sexual intercourse with another individual of the same sex." Tex. Penal Code Ann. § 21.06(a) (2003). The statute further defined "deviate sexual intercourse" as any contact between any part of the genitals of one person and the mouth or anus of another person or the penetration of the genitals or anus of another person with an object. Id. § 21.01(1).

5. 123 S. Ct. at 2476. The police had been dispatched to a private residence in response to a reported weapons disturbance and entered an apartment where one of the defendants resided. *Id.* at 2475. Apparently, the right of the police to enter the defendant's residence was not questioned. The police observed the defendants engaging in a sexual act and arrested them. They were then charged and convicted before a justice of the peace. *Id.* at 2475-2476.

6. 123 S. Ct. at 2476. The Court noted that several of its prior decisions "confirmed that our laws and traditions afford constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education." *Id.* at 2481 ("Persons in a homosexual relationship may seek autonomy for these purposes, just as heterosexual persons do.").

7. *See Lofton*, 358 F.3d at 817 (concluding that "it is a strained and ultimately incorrect reading of *Lawrence* to interpret it to announce a new fundamental right").

8. 123 S. Ct. at 2484 (emphasizing that the case "involve[d] two adults who, with full and mutual consent from each other, engaged in sexual practices common to a homosexual lifestyle" and noting that they were "entitled to respect for their private lives"). In overruling *Bowers v. Hardwick*, 478 U.S. 186 (1986), which had sustained Georgia's sodomy law, the Court noted that "*Bowers* was not correct when it was decided, [] it is not correct today[, and] [i]t ought not to remain binding precedent." *Id.* at 2484.

9. 123 S. Ct. at 2484.

10. N.C. Gen. Stat. § 14-177 (1994). The crime against nature embraces sodomy, buggery, bestiality, fellatio, and all kindred acts of bestial character whereby degraded and perverted sexual desires are sought to be gratified. *See e.g., State v. Harward*, 264 N.C. 746, 142 S.E.2d 691 (1965); *Perkins v. State*, 234 F. Supp. 333 (W.D.N.C. 1964).

11. *See* Robert L. Farb, 2002-2003 Supreme Court Term: Cases Affecting Criminal Law & Procedure (Institute of Government, University of North Carolina at Chapel Hill). *See Lawrence*, 123 S. Ct. at 2484 (noting, before announcing its holding, that the case did "not involve minors," "persons who might be injured or coerced or who are situated in relationships where consent might not be easily refused," or "public conduct or prostitution").

12. S. 969, General Session (N.C. 2003).

13. *Lawrence*, 123 S. Ct. at 2490 (Scalia, J., dissenting). Justice Scalia was responding to the majority opinion's apparent view that society's opinion that certain sexual conduct is immoral may not be enough to justify a state law:

> For many persons these [concerns about homosexual conduct] are not trivial concerns but profound and deep convictions accepted as ethical and moral principles to which they aspire and which thus determine the course of their lives. These considerations do not answer the question before us, however. The issue is whether the majority may use the power of the State to enforce these views on the whole society through operation of the criminal law. "Our obligation is to define the liberty of all, not to mandate our own moral code."

Lawrence, 123 S. Ct. at 2480 (Kennedy, J., writing for the majority).

14. Lawrence, 123 S. Ct. at 2484 (noting that the "State [could] not demean [the defendants'] existence or control their destiny by making their private sexual conduct a crime.").

15. *See supra* note 12 and the accompanying text. Notwithstanding *Lawrence*, prohibitions against taking indecent liberties with minors and statutory rape would be held constitutional, even if the defendant claimed the minor consented, since minors cannot effectively consent to such conduct. *See also State v. Clark*, 588 S.E.2d 66 (N.C. Ct. App. 2003) (concluding that *Lawrence* did not control a case where the defendant, who was 20 years old, was charged with the statutory rape of his girlfriend who was 12 and 13 years old at the time of the sexual intercourse, since the *Lawrence* majority expressly noted that *Lawrence* did not involve minors or persons who might be injured or coerced or who were situated in relationships where consent might not be easily refused).

16. N.C. Gen. Stat. § 14-177, after the proposed amendments, would read: "If any person shall commit the crime against nature with a beast, the person shall be punished as a Class I felon." S.B. 969. *See supra* note 11 and the accompanying text.

17. *See* Joanna Grossman, *The Consequences of Lawrence v. Texas: Justice Scalia Is Right That Same Sex Marriage Bans Are at Risk, But Wrong That A Host of Other Laws Are Vulnerable*, http://writ.findlaw.com/grossman/20030708.html (Tuesday, July 8, 2003).

18. *See supra* note 12 and accompanying text.

19. Grossman, *supra* note 18

20. *See supra* note 12 and accompanying text.

21. *See supra* note 14 and accompanying text.

22. *See State v. Freeman*, 801 N.E.2d 906 (Ohio Ct. App. 2003) (concluding also that "appellant did not have a constitutionally protected right to engage in incest with his daughter" and that "[n]either the United States Constitution nor the Ohio Constitution guarantees appellant a fundamental right to engage in private acts of consensual sexual intercourse with his daughter"). In *Freeman*, the appellant's daughter was 20 years old and, while appellant contended that she had consented to their involvement, there was conflicting evidence on this point, as the daughter filed the police report stating that appellant had forced her to have sex with him. *Id*. at 909.

23. Grossman, *supra* note 18 (noting that some applications of the incest laws might be unconstitutional, such as laws prohibiting cousins from marrying or laws prohibiting an adopted sibling from marrying a "natural" sibling who shared no genes).

24. *See e.g., Miller v. California*, 413 U.S. 15 (1973); *Smith v. United States*, 431 U.S. 291 (1977); and *Pope v. Illinois*, 481 U.S. 497 (1987), which established the test for obscenity.

25. *See supra* note 12 and accompanying text. *See also United States v. Peterson*, 294 F. Supp. 2d 797 (D.S.C. 2003) (concluding that *Lawrence* does not provide a rationale for the extension of Due Process protection for possessors of child pornography).

26. *See e.g.*, N.C. Gen. Stat. § 14-190.6 (intentionally employing or permitting a minor to assist in obscenity offense); § 14-190.14 (displaying material harmful to minors); § 14-190.15(a)(2) (disseminating harmful material to minors); and § 14-190.16 (sexual exploitation of a minor).

27. *See e.g.*, N.C. Gen. Stat. § 14-190.1 (disseminating obscenity intentionally through physical transfer, live performance, or transmission of images); § 14-190.1(f) (advertising or promoting the sale of material as obscene); and § 14-190.5 (preparing obscene films, photographs, slides, or motion pictures for the purpose of dissemination).

28. *See supra* notes 5-10 and accompanying text.

29. The statute provides, in pertinent part, that: "If any man and woman, not being married to each other, shall lewdly and lasciviously associate, bed, and cohabit together, they shall be guilty of a Class 2 misdemeanor."

30. *See* Note, *Constitutional Barriers to Civil and Criminal Restrictions on Pre- and Extramarital Sex*, 104 Harv. L. Rev. 1660 (1991) (arguing that consensual heterosexual intercourse is a constitutionally protected activity). *See also State v. Saunders*, 381 A.2d 333, 339 (N.J. 1977) (concluding that "the conduct statutorily defined as fornication involves, by its very nature, a fundamental personal choice" and thus "infringes upon the right of privacy"). However, prior to *Lawrence*, "many fornication statutes were challenged as unconstitutionally invasive of privacy rights," with "[s]everal lower courts [seizing] on language in *Griswold v. Connecticut*, 381 U.S. 479 (1965)] that noted the importance of marriage to distinguish Griswold and uphold the punishment of unmarried couples for engaging in sexual intercourse." Note, *supra*, at 1664.

31. Grossman, *supra* note 18 (noting that the *Lawrence* "analysis spells doom for the few remaining anti-fornication laws on the books" because "[l]ike homosexual sodomy, fornication is a private, consensual, sexual act, and the laws forbidding it have no conceivable justification other than morality").

32. 123 S. Ct. at 2478 (noting also that earlier decisions such as *Griswold*, which had invalidated a state law prohibiting the use of drugs or devices of contraception and counseling or aiding and abetting the use of contraceptives, had described the protected interest as the right to privacy and placed emphasis on the marriage relation and the protected space of the marital bedroom).

33. Grossman, *supra* note 18 (noting also that "unlike private sexual conduct, like sodomy, neither adultery nor bigamy has ever been protected by our society—to the contrary both have always been illegal, and a basis for marital dissolution [, and] unlike the history of sodomy laws detailed in *Lawrence*, there is a long history of these laws being enforced"). *See also State v. Limon*, 83 P.3d 229, (Kan. Ct. App. 2004) ("[P]rotecting and advancing the family has been a legitimate governmental aim throughout written history."); *Sherman v. Henry*, 928 S.W.2d 464, 469-470 (Tex. 1996) (concluding "that [defendant's] affair with [another man's] wife is unlike the recognized privacy rights concerning child rearing, family relationships, procreation, marriage, contraception, and abortion," that this "adulterous conduct is the very antithesis of marriage and family," and that "[r]ather than suffering an invasion of privacy [by being prosecuted for adultery], [defendant] invaded the privacy surrounding the marriage relationship").

34. *See Cannon v. Miller*, 313 N.C. 324, 327 S.E.2d 888 (1985) (vacating the decision of the Court of Appeals "purporting to abolish the causes of action for Alienation of Affections and Criminal Conversation").

35. A bill was introduced during the 2003 Session calling for the adoption of N.C. Gen. Stat. § 52-13 and § 52-14, abolishing the causes of action of alienation of affections and criminal conversation, respectively. H.R. 1047, General Session (N.C. 2003).

36. Arguably, the use of the state courts by an injured spouse to obtain a compensatory and/or punitive damage award from a defendant in an alienation of affections or criminal conversation claim could constitute state action sufficient to trigger constitutional scrutiny. *See Medvalusa Health Programs, Inc. v. Memberworks, Inc.*, 2003 WL 21322298 (Conn. Super. Ct. 2003) (concluding that the Due Process Clause of the Fourteenth Amendment did not apply to a private, consensual arbitration where there was not state action involved even in the judicial confirmation of the award; distinguishing situations where the Due Process Clause would be implicated such as where a damage award originally imposed by a jury in state court is subsequently remitted by the state court, as in *BMW of North America, Inc. v. Gore*, 517 U.S. 559 (1996)). *But see Tulsa Professional Collection Services, Inc. v. Pope*, 485 U.S. 478, 486 (1988) (noting that private use of state-sanctioned private remedies or procedures does not rise to the level of state action, but that "when private parties make use of state procedures with the overt, significant assistance of state officials, state action may be found").

37. *See supra* notes 33 and 34 and accompanying text.

38. The vacated Court of Appeals' decision in *Cannon v. Miller* justified the torts' abolition, stating:

> A review of the historical and theoretical bases of the actions, and the largely unsuccessful attempts to articulate a convincing modern basis for the "heart balm" torts lead us to conclude that there is no continuing legal basis for the retention of these tort actions today. They protect no interests and further no public policies not better served by other means, and the potentialities for abuse posed by their existence outweighs any possible benefits to be obtained by their retention in contemporary society.

Cannon v. Miller, 71 N.C. App. 460, 497, 322 S.E.2d 780, 803-04 (1984).

A JAG's Journey in Iraq

By Kirk G. Warner

After two days' notice, a couple of weeks at Ft. Bragg's Combat Readiness Center, and an average of 22 needle sticks per man for small pox, anthrax, and even wise-ax, my Judge Advocate team loaded an Air Force C5A for Kuwait in late February of last year. Although, as they say, life is a journey, and I have spent more than my fair share of time trying cases in federal court, I had not traveled life's toughest road—the road of war—until then. In Iraq I was to learn first hand that war moves in mysterious and amazing ways. The modern battlefield, liberation, and occupation depend on military lawyers serving in a remarkable variety of traditional, novel, and creative roles. This is but a brief snapshot of eight months of my adventures in Kuwait and Iraq as a senior military lawyer to the Coalition Command, the Coalition Provisional Authority, and the Iraqi Ministry of Justice in war and occupation. It is a chronicle of patriots, heroes, good, evil, justice, sadness, and hope. A sampling of excerpts from my weekly *Kronicles* sent home tells the tale.

Warner in the Combined Effects Shelter, CFLCC Early Entry Command Post in Baghdad, April 2003.

The March to Baghdad

On Wednesday evening, March 19, LTG David McKiernan, Commander, Coalition Forces Land Component Command (CFLCC), Camp Doha, Kuwait, gave the word to "strike fast and hard." Thus, the quarter million US and UK troops under CFLCC drove through the breaches in the Kuwaiti-Iraqi berm on the road to Baghdad. A little over a month before, this attorney was in his office preparing for a trial. Now, I was 15 feet from LTG McKiernan when the word was given. I would remain the senior Judge Advocate during night operations in the Command Center and War Room until Baghdad fell some 21 days later. We owned the night with our technology. My job was targeting review, collateral damage assessment, and guidance on operations law and the law of armed conflict to the Commander and the staff.

The targeting issues and technology are dramatic. The war and rules of engagement issues are interesting. An incoming Scud or Ababil 100 missile is not. We have had now ten or 11 Scud alerts. We get to don masks, protective trousers,

tops, overboots, two sets of gloves, kevlar helmet cover and helmet, body armor, and load carrying equipment, all while sprinting to a nearby bunker! This wake up call is most irritating ... and terrifying, particularly when you see and hear a mach speed Patriot missile or two taking off trying to intercept....Fortunately, our Patriot Anti-Air Defense Batteries have been batting 1,000—a good 7 for 7 so far....a couple falling out into the desert and into the Arabian Sea. The problem seems to be that unlike baseball a miss means you head to the big bench in the sky. (March 22, 2003)

At D+8 we have our jaws set and teeth clinched as we get report after report of Iraqi violations of the laws of war. I guess we get complacent thinking our enemies will follow the rules of war and civilization. Perhaps it's easy to expect such when you are the one generally kicking their butts. Such is the mood here.... Operations continue to be unbelievably successful with relatively miniscule casualties under the circumstances despite what you may read in the *Times* or hear on CNN. The boys up front are tough and proficient. They are real heroes with unbelievable courage. These might be high tech times, but our men up front are high time heroes. We are working ridiculous hours here on targeting issues all patterned to avoid friendly fire incidents and avoid civilian collateral damage. Often—in the face of the atrocities—you want to remove the gloves and hit hard, but you remind yourself that we are Americans and must take the high road. It is a deadly game that we play as we watch live predator feeds on several moving targets that disappear before our eyes as our weapons hone in. EPW, investigations, and law of war issues grab up the rest of our long hours. Of course, we are motivated by the boys up front that are going on less, if any, hours sleep and are continuously on guard and on the attack. Remember them in your prayers for they do the work for all of us to their rear. (March 28, 2003)

Early in the fight, the intensity, speed, and fog of war took its toll and we had a number of friendly fire incidents for which we became legal advisors to the investigating officers and boards searching for reasons and answers.

The fog of war takes its own toll. We have had a slew of friendly fire accidents on the complex battlefield. Most incidents deal with natural human error (an inverted grid number typed into the targeting computer, rather than the old fashioned stubby pencil method or an automatically engaging Patriot missile battery that mistakes a plane for a missile). Others are a product of a highly technical battlefield (young men and women trying to decide whether a blip on the radar rapidly approaching out of the blue at night is a jet or a missile and in the ten seconds allowed, make the wrong call, going from hero to goat as the first three counter missiles knock down scuds, the last knocks down a passing British Tornado or a FA-18). Most are more basic—a trigger pulled while sleeping with your SAW-machine gun, or a mistaken identity in a sand storm. All are sad tales. Each requires JAG investigation and review...and explanation to grieving spouses and parents. Welcome to war. (April 3, 2003)

As Baghdad fell and our Marines moved into combat north of Baghdad, they recovered our US Prisoners of War. I was fortunate to be their lawyer and one of their debriefers.

Despite the irritable sirens from the mosques and the fowl, there are some assignments that make it all worthwhile. Last Sunday, I was tapped to be a member of Coalition Forces Repatriation Team when that afternoon we received word that elements of the Marine 3rd LAR rescued the remaining seven US POWs. I'm not sure if anyone has ever really de-patriated but we repatriate nonetheless. The beauty of this mission is that it means that we've recovered our POWs. I was the JAG assigned to the small nine-person team of combat shrinks, medical, and intelligence folks charged with receiving these courageous heroes and spending time with them getting them back mentally and emotionally into the fold. We secrete ourselves at an undisclosed location with these great soldiers, away from the media and the big wigs that want a photo-op, so

these folks can decompress, recuperate, and be debriefed. (hint: that's where the JAG comes into play.) Of course, we cry, we laugh, we hug, we talk,...man do we talk. The biggest shock of all is, of course, "Syracuse won the national championship?" (April 17, 2003)

Inside Baghdad

Shortly after the fall of Baghdad, I flew into the newly named Baghdad International Airport with LTG McKiernan and his staff as part of the Early Entry Command Post and CFLCC-Forward. Things were still a bit hot.

The war still continues around us. You hear some sporadic gunfire and explosions. Attack choppers patrol the skies; Bradleys and Abrams patrol the ground. We remain locked but not loaded. Despite this, several of us smoked some cigars and watched the sunset over the palace Regime Leadership Lake "cottage/mansions" that surrounded the palace lake. We sat in Saddam's sofas and chairs on the balcony. As in the MasterCard commercial, cigars $8; antique sofa and chair $8,000; smoking a cigar in Saddam's chair in his crib, priceless! Tomorrow I head downtown to sample the Presidential Palace and try to figure out how to get the Iraqi Courts up and running. I just hope that I am not the one up and running. (April 23, 2003)

In addition to serving as the Staff Judge Advocate Forward for CFLCC and eventually the Deputy Staff Judge Advocate, Combined Joint Task Force - 7 (Coalition Provisional Authority), I started to wear new hats, including the legal advisor to Task Force FAJR's Ministry of Health team, Coalition Liaison to the ICRC (Red Cross) and the Ministry of Justice, as well as the lesser known, but highly important, Keeper of Teeth and Pirate Extraordinaire.

We pressed on to the Ministry of Health and a few minutes later I'm standing in the middle of a crowd with Doc Fisher trying to figure out how a GPS works, both of us products of the non-computer generation. It was comical. We eventually gave up and went on to the first meeting of ORHA and the Board of Ministers of Health. A painting of Saddam loomed over the conference room. His face had been painted over in blood red. The meeting was a huge deal—trying to get the hospitals and medical system up and running. A bunch of legal issues arose and being the only lawyer at the meeting, I was soon called into action. The US ORHA Ambassador leading the meeting suddenly became my best friend. We left the meeting, went to the ICRC (Red Cross) compound and had tea (and a cold beverage—diplomatic necessity of course) with the Head Surgeon, a Lebanese born, Toronto trained cutter that had endured many tribal, civil, and international wars in the trenches, guts, and gore of hospitals for the last 30 years. As we sipped on tea, the staccato of gunfire and explosions rang out from up the street. My teacup shook a little but no one seemed to act like they noticed. The Duke turned and yelled, "Hey keep it down out there!" Our MP escorts were out in the streets taking up fighting positions. The surgeon didn't miss a beat, asking whether we needed to sweeten our tea. Amazing. (April 25, 2003)

Rebuilding Justice and the Courts

The Iraqi courts and justice were in shambles. After abolishing the Special and Regime Courts and scrubbing up the Iraqi Penal Code a bit, we waded into the rest of the judicial system.

Today I was part of the first official meeting of the ORHA representative and some selected Iraqi lawyers to discuss the justice system in Iraq. The task was fairly simple: Take a corrupt system, reform it to eliminate political crimes and bad judges, ensure due process and equality of gender, race, and religion where it has never existed before, find good judges, administrators, and clerks, modernize the old Napoleonic Code system, rebuild/repair the court facilities and do so under fire. No problem. Lawyers are traditionally a lousy audience. Lawyers who don't speak your language are even worse. We did our best and hopefully started the process to a better system. One of the Iraqi judges commented that he and his fellow judges had followed GEN Franks and LTG McKiernan's proclamation and returned to work arriving at 9:30 a.m., not seeing any cases (due to lack of police bringing folks before them) and going home by 2:00 p.m. without anything to do. I casually commented to the Colonel beside me that this should not be too difficult now that the judges had figured out our system already. Now for the lawyers.... (April 28, 2003)

I'm not sure anyone really thought about the full effect of Saddam pardoning and releasing all the prison inmates onto Iraq in October 2002 (Guess who was doing most of the looting?) or about what would happen if the Iraqis destroyed all the courthouses, prisons, and jails beyond use. I wish we had. We were now fully engaged in the entire justice system from the arrest to adjudication to incarceration. This was not in the brochure!

We did have a good day at the courts on Thursday. We opened the first two courts in Iraq and ran 15 of the Iraqis arrested for the worst crimes (murder, rape, and robbery) through the investigation courts for further disposition and investigation. These hapless prisoners have been kept in the police academy jail. Despite our monitoring, the Iraqi guards don't seem to have our humane treatment ideals yet in mind. They have been given a can of kidney beans every day, while the guards keep the MRE's we have given them for the prisoners. The can of beans may in fact be more humane than an MRE. The only problem was that they had no can opener, just the can. We have now taken over the jail until we can retrain these folks. It may take a while. (May 10, 2003)

The wheels of justice have literally stopped some courts in Iraq. Getting the courts moving involved many twists and turns. In Al Ramada the process server used to announce the court docket, notify witnesses, and serve papers by traveling around town on his motorcycle. Since the court was closed during the war, he had to sell his motorcycle to get by and now we have a court crisis! Sounds silly, but until we get Mohammed new wheels, justice will remain parked at the courthouse steps. (June 6, 2003)

Of course, there is always the voice of reason…or at least the voice of the Lawyers Union. If we had their passion, we'd move mountains.

Yesterday I attended the first official meeting of the Iraqi Union of Lawyer's (the equivalent of our American Bar and founded in the 1930's) meeting since the war. It was a classic. Democracy rang loud, as did the 500 lawyers who basically ran the president of the Bar (Uday's private counsel) off the stage and out the

door about 20 minutes into the meeting after a forced show of hands as to who wanted him pitched. The shouting, pointing, banner carrying, and pitching became a bit unruly and the scene pretty tense as the crowd surged toward the podium. I almost had to administer oxygen to our MP security detail and several of the other JAG's attending. After the ex-president, accompanied by some of his Ba'athist cronies (the then former Bar Council), was voted out, pushed and shoved down the aisle, he muttered curses and promised revenge as he caromed through the crowd and out onto the street. Rough justice, I suppose, and it was fun to watch. (May 21, 2003)

Meanwhile, justice restoration inched forward. We launched the Judicial Assessment Teams this weekend throughout Iraq for a two-week mission. Courts are opening in many areas of Iraq despite efforts by many of the bad guys ("dead-enders") to thwart the effort. De-Ba'athification interviews and screening will likely claim the top three layers of the 23 remaining ministries (the ministries of defense and intelligence taking a forced nose-dive), including most of the judges on the Court of Cassation, the Iraqi Supreme Court. The Iraqi Bar continued its democratic journey and elected a five member interim governing council...one candidate chanting "U.C.M.J., U.C.M.J." (Uniform Code of Military Justice) to me as he walked off the platform, headlining a kooky day. Being an American lawyer, we devised a creative way to pay private lawyers their own emergency payment. We created an Access to Justice program—a sort of Legal Aid deal—that paid any Iraqi lawyer who signed on $250 US dollars in exchange for 125 hours of indigent legal assistance such as helping to find lost relatives, property disputes, and the like. Nothing like $2 an hour to brighten a lawyer's day! [Note to file: Don't tell any of this to my clients.] (May 27, 2003)

We also met earlier in the day at the Bar with some criminal defense lawyers. It was a blast. Everyone talking at one time, everyone listening at one time, all talking with their hands, all animated, and all delighted to have a say. It looked like a Richard Simmons' aerobics session. My favorite lawyer that we've met is a towering Kurd who looked like Uncle Fester and talked like Lurch. He is a kick. Seems he and his fellow defense lawyers have plenty to howl about. Unless a relative or the accused hires them from the holding dock, the defense counsel are generally appointed by the court late in the game for a whole 1,000 dinars—less than a buck—for each case. At that rate, Cochran couldn't buy a glove to fit. They don't get to see their client generally until trial, generally don't participate until after their "confession" is obtained—mainly by crook—and then get to face paper evidence and testimony, getting to cross examine their own client who is the only live witness most of the time, and, of course, generally lose. Houston, we have a problem. The wheel of justice is flat and needs fixing. (June 6, 2003)

Once More Into The Breach

Judge Advocates are soldiers first. Laugh if you must, but it's true. Commanders barely moved without us. We pressed on daily into the streets to work on justice, governance, and operations…sometimes into the fray. Judge Advocates fought alongside the combat troops, saved and lost lives, and were often engaged. Then there was my team….

> We moved to the city center [Al Husaynia] where a daily arms market was thriving. We showed up, spread out, tried to keep our guns in the sun so that our guns reflected their metal making us look more threatening than we actually were—I thought about using my flashlight to add to the deception. Presumably sensing that we were some motivated JAG's, they quickly disappeared into the crowded city market. I suppose it was our own version of Shock and Awe! Of course, most of the thugs were probably just shocked that we were actually there and huddling in the middle of the market laughing and awing hysterically at us. Instead of facing the gun dealers, we soon faced a full-scale assault by a platoon of kids. We barely survived. We marked the grid for a future sting operation and the kids for some future loving. One little girl threatened my heart by whispering in my ear that she loved me. (I have that effect on women of all ages. Especially when I bribe them with candy and chocolate.)
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> The child platoon enthusiastically showed some of our guys an ammo dump and some unexploded RPGs buried beside their soccer field, making the sidelines much more exciting in a game that frankly needs more excitement. We marked the grid to pass on to the explosive ordnance demolition folks.. We were shown the city hall that the Mujadeen had taken over. These sick twists were apparently shooting out into the streets at night. We marked the grid for our security guys to come and set things straight. We realized that the whole city needed to be marked for something. (June 6, 2003)

Abu Ghraib

I remember when Abu Ghraib was empty. As one of the largest prison compounds still somewhat standing, it became the center of our prison rebuilding effort now that we were forced into the criminal detention business. The dual hanging chamber of the execution building where hundreds of thousands of Iraqis met the Regime's wrath for their final time was not part of that rebuilding effort. The scores of Iraqis at the gates searching for their hands hacked off by the Regime were. I've toured Abu with everyone from Bremer to DeMillo to Sanchez to Karpinski...luckily before the prison's remodeled cell blocks were opened!

> The legendary black hole of Iraq is a prison called Abu Ghraib just west of Baghdad. Temporarily renaming it Camp Vigilant doesn't do it justice. The problem with justice is that you need prisons. Here, there's an international humanitarian organization for just about everything—vaccines, medical supplies, mine removal, hospitals, and all sorts of other feel-good things. No one, I mean no one, wants to fund prisons. So, we have a problem. Depending from which side of the bars you were on, Saddam's fall decree releasing all the prisoners from the prisons has created a nightmare here. This "fresh start" left us holding the bag when it came to recidivists. Now I am convinced that these convicts will eventually return to their previous homes but in the meantime they are causing havoc. Their previous home is also in havoc and we are hard pressed to get them up and running to acceptable standards tomorrow. So, we have to be creative. First, we had to move the prisons to the justice ministry from

Meeting with Iraqi Defense Lawyers at the Lawyer's Union in Baghdad, May 2003.

the interior ministry. Next, you have to set up all sorts of temporary accommodations for our new involuntary guests. Of course, the prisoner census mounts as the judicial system tries to crank up to handle them. The old saying 40 lbs of you-know-what in a 25 lb. bag comes to mind. Finally, you have to find or build usable prisons. We toured the prisons this week in an attempt to round out the judicial system. How fun! It turned into quite an adventure. (June 12, 2003)

Detention is a four-letter word. We are having an awful time in Baghdad keeping up with the criminal detainees. Imagine a city the size of Chicago and no brig. Logistics are a mess as is dealing with the mounting number of criminals. We can thank Saddam for much of our woes. His release and pardon of close to 120,000 felons from prisons last October accounts for one in four of our detainees. For good measure the regime and its former guests looted and destroyed every prison and prison record in the country. Guess who was busy leading the looting festival immediately after the boys from the 3rd Infantry Division pounded into the center of Baghdad until we could get some more guys here to restore order? We deal and meet with all comers on detainees. (June 26, 2003)

The Mother of All Courts

One of the benefits of being in on the ground floor of justice in Iraq is the ability to create things...like a new court system. In early June, we created sort of a federal criminal court system that tackles cases of national scope. It is the forum, in part, that will try Saddam and other Regime leaders for atrocities and war crimes.

We have done something unique this week. We established an entirely new court system in less than five days—The Central Criminal Court of Iraq. We secretly call it the "MOAC" (Mother of All Courts). This one came from a request from the top...POTUS [President of the United States]. The concept is simple—take the top judges from around the country, make sure they aren't fishing buddies with Saddam, select some prosecutors of note, and throw them together in a self-contained, independent, circuit-riding court system comprised of an investigative court, a trial court, and an appellate court, and run the felonies of national import through them as soon as possible to kick off justice in a big way. To show that we mean business on the human rights front, we did throw in a few nice ditties for the court to follow like a real right to silence, a right not to be tortured to confess, and a right to a real defense counsel early in the case. No worries though. The cases to be tried before the MOAC are to be particularly nasty crimes such as violence of a scale that transcends provincial boundaries, inter-ethnic and factional violence, terrorist activities, governmental corruption, and perhaps a few atrocities here and there. We are seeking candidate cases to refer to the new court and business appears brisk. If you have one in your neighborhood, drop me a note! (June 18, 2003)

There are plenty of candidates for the Central Criminal Court. We focused early on investigation coordination and evidence collection and preservation of over 200 mass gravesites sprinkled throughout Iraq. The Regime was extremely busy in the last decade or so. It was the weapon of mass destruction.

I'm up to my teeth in teeth. In one of the most bizarre twists to date in this war for me, I had to sign for 556 teeth from 299 skulls (I know you're thinking this is the start of a good West Virginia joke, but I won't go there, besides we wouldn't have that many teeth then would we?) that were extracted, so to speak, for DNA sampling from the mass grave at Musayib from the 1991 Shia uprising. The kicker is that someone marked the evidence custody sheet "refrigerate." Imagine my surprise when the lawyers in the Coalition Provisional Authority General Counsel's Office objected to my storing my new charge in their fridge's vegetable tray. Under my pillow will have to do. Besides, I may get rich. (June 30, 2003)

The Geneva Article 5 tribunals that we're doing on the High Value Detainees are, on reflection, a bit odd. I can't think of any other time in history when any army has had to do these formal status hearings on high-level government and military officials. They are bizarre in the sense that we review their intelligence files and then we examine the detainee to make determinations as to whether they are entitled to Prisoner of War status under the Geneva Conventions. Aside from the fact that some of these folks participated in killing thousands of Kurds, Kuwaitis, and Shias, plotted assassinations of presidents and oil ministers, and said "yes" way too many times to the big boss with the thick mustache, they are as interesting as you'd expect for a bevy of former ministers, ambassadors, and officials in the highest levels of the regime. Of course, aside from that Mrs. Lincoln, how was the play! (July 4, 2003)

The Special Prosecution Pirates

Part of the proud tradition of the Regime was finding ways to slip around the "oil for food" sanctions. An imbedded, state-sanctioned oil smuggling operation in the South

was a way of life for many. This smuggling was hemorrhaging oil and money from the Iraqis. As a natural offspring of the Central Criminal Court of Iraq, we formed a Special Prosecution Task Force to select candidate cases to recommend for referral to the court and to shepherd the cases into and thru trial. In early August, our band of three prosecutors headed south to Umm Qasr to prosecute the smugglers, confiscate vessels, and stop the illegal flow of oil out of Iraq. In the process, we turned into pretty cool pirates. Our prosecutions, along with Operation Sweeney for which I served as a legal advisor, confiscated scores of vessels, recovered hundreds of megatons of oil, and bagged over 70 captains, mates, and crew.

> I've always wanted to be a pirate. Swashbuckling around with an eye patch, hook, peg leg, and a parrot on my shoulder. I even trained by hitting a Jimmy Buffet concert the night before we got word to mobilize to come here. I finally got my chance this week. We've been facing some serious oil smuggling operations in the southern Iraqi waters that were costing the people money, oil, and electricity. Our Special Prosecution Task Force (SPTF) which looks into special crimes of national import to be prosecuted before the new Central Criminal Court was tracking the smuggling developments in search of an opportunity to stop the hemorrhaging. Coincidently, the HMS Sutherland had been tracking an oil tanker, Navstar I, anchored in the northern Arabian Gulf along the outer road to the port of Umm Qasr, Iraq. Our team recommended that the vessel be seized if it pulled anchor and attempted to run....
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> On the morning of 11 August, our SPTF JAG team of three finally assaulted…er, boarded, Navstar with our three Russian translators the moment she hit the dock at Umm Qasr. Fortunately the British pack something for everything in their kit bag, including Russian interpreters. Although we planned to board the ship the pirate way climbing ropes with blades in our mouth and eye patches, we decided on using the ramp since it was already lowered by the time we decided. The captain was an old U-Boat commander from the Russian Navy. He was straight from central casting complete with ruddy face, paunch and slurred speech from enough vodka to fill the Navstar twice over squeezed into his old uniform festooned with ribbons and sitting proudly in his cabin of walls lined with Russian pinups. He carried his 67 years poorly, fueled by the despair of a retirement plan that now included a cruise through a sea of Iraqi prisons. The motley crew of 21, counting the ship's cat Kuzma, fit the mold as well. It had all the fixings for a great Clancy cold war novel. We first reviewed the logs and ship documents. I quickly found the only document of immediate concern. Yes, the ship had a de-ratting exemption from the Tanzania Board of Health! Kuzma looked game so I felt better about this adventure and slipped the round chambered in my pistol out quietly when no one was looking....Of course, all of the fuel was illegal and created a more than slight problem for the captain and crew of

the Navstar. Fifteen hours later the crew started some serious singing and dimed out the captain, the chief officer, and several big fish, including—I'm not kidding—an Iraqi sailor with a peg leg, big time....All in all a good days work for the people of Iraq and for the newest pirates of the Coalition Forces. If only I had a hook and peg leg I'd be in business. We earned our parrot-head ribbons with eye patch devices this day. (August 13, 2003)

Evil and Sadness

Maybe I have been sheltered in a cozy civil litigation practice here at home, but I've never known true evil in my life until I saw it up close and in person in Iraq. The be-headings, be-tongueings, be-earings, be-handings, and the mass graves courtesy of Saddam and the Regime all were bad enough, but nothing is more heinous than disguising bombs in ambulances and blowing up the Red Cross or the United Nations' compounds. Perhaps it is too simplistic to sort things out into good and evil. If you've seen it live or dead, for sure it's not.

This week was a bear with our losses. We'd been going all out trying to locate two of our missing soldiers who disappeared from their security post on the perimeter of a demil site earlier this week. Despite a massive search and investigation, they were not found. The mood here was solemn as more and more details developed and more days went by. I had been with LTG Sanchez inspecting Abu Ghraib prison the morning a patrol located the bodies of these poor men barely covered with straw beside the road. We were in the command Black Hawk choppers in route to another prison site when the call came in and we diverted to the scene northwest of Baghdad. I was unfortunately the only one with a camera so I did the scene. There are few things in life sadder than this. Young, brave men in a far away place doing great things for you and me making the ultimate sacrifice...it was close to home. After making sure CID was in route, the scene secured, and the shaken patrol calmed, we left the remains and part of our soul behind. It was a quiet flight home as we reflected and resolved. Alexander [the Great who died at Babylon], impressive as he was, had nothing on these boys. (June 30, 2003)

It's been a sad week for the good guys. Three weeks ago, I toured the Abu Ghraib prison with UN Special Envoy Sergio Vieira de Mello and Ambassador Bremer and had to field some softball detainee questions from them. Remarkably, the prisoners within the concertina wire holding areas gathered in the corner near the two diplomats and started clapping for them. I don't know what they were clapping about, but in my book it was recognition that they were the future of Iraq. Even the prisoners somehow knew. Both are the sorts of men who leave impressions of competence, dignity, and grace everywhere they go. They are special. De Mello's illumination was snuffed in the sordid bombing of the United Nations compound here earlier this week. It was a tragic loss. I cannot imagine what drives such evil. (August 23, 2003)

The Dawn of Justice

In August of last year, we were closely monitoring the investigation and potential prosecution of a young rogue cleric named al-Sadr in Najaf. As events have unfolded, he became a central focus of attention this Spring when his "militia" started to surface and create havoc. One judge in Najaf characterized the potential spirit of justice in the "cradle of civilization" that should serve as an inspiration to the Iraqis and to the rule of law.

A-Khoei's execution had been investigated by a brave young judge who also investigated and is prosecuting the former mayor of Najaf for corruption. We have grabbed the case for trial in the Central Criminal Court. Our Special Prosecution Task Force has been following the A-Khoei murder investigation with interest. We were so impressed with this judge that we ended up offering him a position on the new Central Criminal Court. He is the most courageous Iraqi I have met. He has looked corruption and brutality directly in the eye and said justice will prevail. [We] were sent down on Marine Chinook choppers on short notice by Bremer to meet this brave judge and to find out what's up with the investigation since the results could further ignite the An Najaf powder keg. The A-Khoei murder investigation is one fraught with peril and intrigue. People want other people dead. The Judge certainly could be in the cross hairs. Despite this threat and pressure to conduct the court's proceedings in secret to protect the witnesses, the judge adamantly refused to keep anything secret insisting that that was the old Iraq and that in the new Iraq justice must be open and obvious. He tells witnesses that some day you will have to stand in front of the defendants and tell them that they are a killer. He is a beauty. He is personally taking a stand on justice, law, security, and order on behalf of all Iraqis. The rest need to follow suit or this will be a long journey here. (September 8, 2003)

The End of the Beginning

My journey wound down in September of last year. Although to some the jury is still out on Operation Iraqi Freedom, the verdict is in for me. If the Iraqis could pick a foreman for the jury, I suspect the majority would pick an old Iraqi doctor who approached us at the Ministry of Health soon after we came to Baghdad. His words made the trial worthwhile.

When I talk to my family and friends, I tell them what is going on now, with the shortages and the suffering, is like a surgery for cancer. Saddam was a cancer you know. When you operate on someone for a cancerous tumor, you must cut through the muscle and sometimes the bone, to get the entire tumor out. After the tumor is taken out, your muscles and bones hurt greatly and give you much pain while you heal. After a couple of days, you start to see a change—you are doing better, you feel better. That is how it is now for Iraq. The Americans came and took out the black cancer and now we must work through the pain of recovery but eventually we will enjoy a full life, free of pain and no fear of another cancer." (May 21, 2003) ■

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An Interview with Justice Robert H. Edmunds Jr.

By Thomas L. Fowler

In May of 2004, Tom Fowler talked with NC Supreme Court Justice Bob Edmunds at his office in the Justice Building in downtown Raleigh. Justice Edmunds graduated from the University of North Carolina law school in 1975 and has served on the Supreme Court since 2001. The following are excerpts from this conversation.

Fowler: Justice Edmunds, you were born in Danville, Virginia, and moved to Greensboro, North Carolina, when you were eight years old. Tell us about those early years.

Justice Edmunds: My mother was from Greensboro but dad was from Virginia so that's where they went when they married. Danville had the closest hospital to where we lived when I was born. Dad was in the dairy business and we lived in a small town in Virginia for about eight years. I remember it as good times. But Dad wanted to be his own boss so we moved back to Greensboro where he bought a metal fabricating business. Greensboro has been my permanent address ever since.

Fowler: What kind of fellow were you in high school?

Justice Edmunds: Oh, boy. Probably a drudge. I went to a fairly demanding high school and after making poor grades at first, I realized they were pretty serious about it. So I spent a lot of my time just working. I wasn't any kind of athlete, I'm afraid. But I made a lot of friends there and run into them from time to time.

Fowler: Why did you study so hard—was that a tradition in your family?

Justice Edmunds: My dad's family did have a lot of doctors in it, but more important was my sister's experience. She is a couple of years older and had also gone to a school where they worked her pretty hard. After a while she said she wanted to come home and Mom and Dad told her no—so I didn't think that left me with much of an option. [laughs] And there are matters of pride and competitiveness involved. You want to do as well as you can.

Fowler: As a National Merit Finalist you could have attended Chapel Hill, Wake Forest, or even Duke, but instead you attended colleges in Massachusetts and New York. Why did you travel so far north for your undergraduate education?

Justice Edmunds: Looking back on it, I've concluded that the headmaster of my high school, Woodberry Forest, preferred sending his graduates out of the south. A number of classmates went to Harvard, Yale, Stanford, Trinity, Amherst—he encouraged me to go to Williams in Massachusetts. I did not know too much about Williams but I went up and took a look at it. It was an interesting place. And I decided to go and had a great time. I had never run into anybody like some of the folks there. My freshman year I had one roommate who lived in Brooklyn and another from Long Island. I've lost touch with the guy from New York City but I've kept up with the one from Long Island—we're still friends. It was an eye-opening experience to be dealing with these Yankees.

Fowler: Had you traveled much out of the South or were you pretty much a southern boy?

Justice Edmunds: Pretty much a southern boy. Of course I thought I was extremely sophisticated, but holy smoke, it was a different world up there. And they were not kidding about it being academically demanding. Williams was a tough school.

Fowler: And then you transferred to Vassar?

Justice Edmunds: Yes, after my sophomore year at Williams. I graduated from Vassar in 1971.

Fowler: So how would you say being schooled in the North rather than the South affected you?

Justice Edmunds: It gave me a broader perspective, I think. When I was in high school I had thought I'd heard a wide variety of opinions, but when I got up to New York I realized that what I'd been hearing was a relatively narrow section of the spectrum of available ideas. Being in a different part of the country with people unlike the ones I had known at home was a wonderful experience.

Fowler: You majored in English. How practical was that?

Justice Edmunds: Well, it has turned out to be practical. Reading and writing is what we do all day on the court. So I use that education all the time. Lawyers don't write like English writers, I know, but just the art of getting your grammar right, outlining your thoughts, and putting them in a logical sequence, is something a judge needs to be able to do.

Fowler: As an undergrad when you were majoring in English, were you thinking about being a lawyer or were you thinking about being a writer?

Justice Edmunds: I was thinking about being a writer, but frankly I was more interested in scientific and technical fields. But I took courses in physics and calculus and found out I had absolutely no talent for the sciences. So that's really why I wound up in English.

Fowler: When did you know you wanted to go to law school?

Justice Edmunds: After I graduated from college I didn't quite know what to do. I didn't do much of anything for a year, and realized that wasn't going to work.

Fowler: You didn't start your novel at that time?

Justice Edmunds: Ummm … I took notes. [both laugh] After talking to my dad and considering career alternatives, I applied to Carolina Law School. I didn't want to go to English grad school and law school didn't require that technical or scientific background that I had shown no affinity for. So law seemed a realistic career path for me.

Fowler: Was your law school experience a good one?

Justice Edmunds: Oh, man, it was awful. [both laugh] Everybody in law school had done well as an undergraduate—yet half of those people are going to be in the bottom half of their law school class. I never was able to crack the code. I never was able to figure out how to get really good grades. At the time, it was three frustrating years. But law school did what it was supposed to—I got out of there thinking like a lawyer. And the class I was in turned out to be an extremely talented bunch.

Fowler: Who was in your class?

Justice Edmunds: A.P. Carlton, who is past-president of the ABA, Justice Bob Orr, Tom Ross, Hank Hankins, managing partner of Parker, Poe, Dave DuBuisson, who became editorial page editor at the *Greensboro News and Record*, Lance Africk, a federal judge in New Orleans, Susan Owens, a Supreme Court Justice in Washington state, Al Thomas, who was over at the Court of Appeals, State Senator Walter Dalton, State Representative Skip Stam. And lots of successful practitioners and trial court judges. We didn't know it then, but it was quite a group.

Fowler: That's a great class. Your class reunions must be something!

Justice Edmunds: We have fun—but at the time we never imagined we'd be running into each other in these various capacities later in life.

Fowler: Did you tell me you attended the classes of former Carolina law professor and current AOC counsel Tom Andrews, and did you get an A?

Justice Edmunds: I did have Tom Andrews. He taught criminal law my third year in a small class seminar. And I did get an A.

Fowler: You started out as an assistant district attorney in Greensboro and later became a federal prosecutor. How did those jobs shape your understanding and knowledge of the law?

Justice Edmunds: As an assistant district attorney in Greensboro, I started out in traffic court. I learned how to handle things like breathalyzers, evidence, search and seizure questions arising from what the police officers find in the car. It all happens fast in traffic court, and the stakes are usually low. So if you lost the case it was just a misdemeanor. You learn much that will be valuable to you as a litigator and you learn it in a hurry, and if you make a mistake it's not the end of the world. Another thing that was nice about it was that as a traffic court prosecutor you meet almost every lawyer in town. All attorneys have clients that get tickets and sooner or later they all come in to traffic court and you get to meet them and work with them. After a year or so I felt like I knew most members of the bar in Greensboro.

Fowler: And how about as a federal prosecutor?

Justice Edmunds: In some ways, I was frustrated because I'd gone from state court where you try cases fast and they just keep coming, but in federal court the pace was much slower. This was before all the illegal drug cases burst on the scene. I was assigned forgery cases, tobacco fraud, stuff like that. I felt that I was handling cases that were less consequential than the ones I'd worked on as a state prosecutor. But it was mostly a matter of seniority—the longer you were there, the more significant cases you would get. And federal courts, because the case load is so much less, are more formal. You learn to try a case much more rigorously there. You are not allowed to make mistakes. Or if you do, you read all about it in the newspaper the next day or in the advance sheets. I did a lot of litigation and being in a courtroom was, I thought, about as much fun as you could ask for in professional life.

Then, after four years as an assistant US Attorney, President Reagan appointed me the US Attorney. So then I got to drive the bus for a while. [Justice Edmunds was US Attorney for the Middle District of North Carolina from 1986 to 1993] Some of the office management responsibilities were not too much fun but being able to work with a real strong staff of attorneys—a lot of them are still there—was great. And I particularly liked that I could assign the best cases to myself. I continued to try cases when I was the US Attorney—three days before my resignation became final I was arguing an appeal in Richmond. President Bush had kept me as US Attorney, but when President Clinton came in, Republican appointees were expected to resign—you lose the job the same way you get it.

Fowler: You were then in private practice for five years. What was your practice like?

Justice Edmunds: I went into private practice in Greensboro with the firm of Stern & Klepfer. It was a medium sized firm, and everyone was good at what they did. I did primarily criminal defense work, including some capital cases. It was gratifying to find that I could make a living as a lawyer without having to rely on a regular paycheck from the government.

Fowler: Several former superior court judges have observed that a superior court judgeship is the best job in the state—why, in 1998, did you decide to run for the court of appeals rather than the superior court?

Justice Edmunds: I don't know if superior court judge is the best job but it sure looks like it would be interesting and fun. But I would have had to run against Catherine Eagles, who is a personal friend, the wife of one of my former law partners, and a superb judge. So it just wasn't in the cards. I wasn't going to do it. The alternative was the court

of appeals. There were seats up for grabs at the time, so that's where I wound up filing.

Fowler: Had you always wanted to be a judge?

Justice Edmunds: I did. Much as I liked being a litigator, there was a part of me that had the judicial temperament—I wanted to weigh things, and sometimes inadvertently I would see both sides of an issue—which can be hard on a litigator, but it's useful for a judge.

Fowler: What was campaigning like? This was the first time you ran for office?

Justice Edmunds: Well, the first time I ran for election was in 1996 when I ran for attorney general.

Fowler: Oh, yeah, I'd forgotten that.

Justice Edmunds: People forget—that's the mercy of politics. But in 1996, Mike Easley, now Governor Easley, was running for re-election as attorney general. The Republican party solicited me to run. And having had one of the all-time great appointments, as US Attorney, I felt that I was qualified and that I could help my party. So I ran. As hard as I could. And I got clobbered. But it opened the door to everything that followed. I campaigned from Cashiers to Hatteras, and got to know politicians, party regulars—the people who are involved in the process all over the state. I have no doubt that I would not have been elected to the court of appeals if I had not taken the time and made the effort for a serious run for attorney general.

Fowler: So you were a pro by the time you ran for the court of appeals.

Justice Edmunds: I knew what I was getting into. It takes an enormous amount of time, energy, and money. You have to be willing to commit all that. Your family has to know you are not going to be home for any weekends for a year and a half. I could not have been a candidate if Linda, my wife, had not been willing to run the household and raise our sons singlehandedly while I was out campaigning. Your law partners have to be willing because your billings will drop precipitously. You have to know that you will live out of your car for a year and a half. But I enjoyed most of it. I've never thought of myself as an extrovert, but no matter how tired I felt when I drove into a town for an event, by the time I would leave, I was recharged. It's exhilarating to get out there and meet people. Most people, even if they aren't going to vote for you, understand the importance of having candidates and people who are willing to be candidates. Lots of people said to me: "I'm a Democrat and I'm probably not going to vote for you, but thank you for being out here."

Fowler: So you were elected to the court of appeals but after only two years you left to run for a seat on the Supreme Court. Why?

Justice Edmunds: It was a matter of opportunity, not something I'd planned. To my surprise, I turned out to be the senior Republican of those who were interested in running.

Fowler: Duke Law Professor Paul Carrington has said that "it is clear to all that Justices of the Supreme Court of North Carolina hold political office." Yet Professor Carrington suggests that "the best method of selecting Supreme Court Justices is appointment by the governor with the assent of a supermajority of the Senate" rather than elections. What do you think?

Justice Edmunds: We've had a lot of discussion about that. Everyone now on the Court got there through partisan election. It's a system that all the justices, and all the judges on the court of appeals, know from experience. The change to non-partisan elections make many of us a little uneasy, even though politics is, in many ways, a mysterious game. Still, all of our appellate judges have had some success under the old system. The change to non-partisan, publicly funded elections makes us uneasy because we don't know how it will play out. From discussions here I think many of us would be happier or at least we would feel a bit more in control of our destinies if there was a system whereby once you were elected, which would satisfy the constitution, there was some form of retention system. We would not feel so much that keeping our jobs was a roll of the dice. But so far the public has not shown much enthusiasm for changing the system of popularly elected judges and justices, so that's what we live with. Every system appears to have a strong political component that you just can't avoid.

Fowler: You are in your fourth year on the NC Supreme Court. How do you like it?

Justice Edmunds: It's wonderful. It's challenging work. It's almost always interesting. And one of the most gratifying aspects is working with my colleagues. When we are all together discussing cases, and I'm listening to these other six good lawyers going at it, I feel privileged to be a part of it. People may not always agree with what we do, but there is a lot of thought that goes into the process. If I had known, in law school, that I would wind up on the Supreme Court, I would have complained a lot less. [laughs].

Fowler: Have there been any surprises or has the job been as you expected?

Justice Edmunds: It surprises me how hard it is. When I was at the court of appeals there was always the comfort of knowing that if you say something poorly or write an opinion that is ill-considered or just isn't a good idea, there is a higher court that can correct it. Here, that safety net doesn't exist, except in those rare cases when there is some type of federal review. We have to be very cautious in what we say and how we say it. We don't want to inadvertently create new law or throw settled law into confusion while searching for a memorable phrase. Precision is supremely important. Intellectually I knew it would be this way on the Supreme Court, but now I'm living it. Settling on the right words, the right phrasings—it's one of my favorite parts of the job but it's also one of the most challenging.

Fowler: In 2000, your last year on the court of appeals, you authored 43 opinions, and wrote three separate concurrences. In your first year on the Supreme Court you wrote five opinions, seven opinions in your second year and six opinions in your third year—that's an average of six opinions per year on the Supreme Court. How would you compare the jobs of court of appeals judge and Supreme Court justice?

Justice Edmunds: The cases come a lot faster at the court of appeals, and there are a lot more of them. The court of appeals does not have the control over its docket that we have here. There, you take a case and you do the best that you can with it, and you go on to the next one. If you get behind, it's tough trying to catch up. Here, the case load is lower but the issues can be more complex. Lots of the cases in the court of appeals just handle errors that the trial court may have made, while the Supreme Court is supposed to deal with the state's jurisprudence, though of course it doesn't always work out that way. So Supreme Court opinions are often much longer than those of the court of appeals. And once draft opinions are circulated to the other six justices, and their responses and ideas are considered, there are often major rewrites and reconsideration of the opinion. It's a much more punctilious, methodical process, which

is, as I said, a reflection of the differing caseloads of the two courts.

Fowler: By statute, there is a right to appeal to the Supreme Court any decision of the court of appeals in which there is a dissent. This provision appears to give a court of appeals judge the power to send an issue to the Supreme Court for resolution. Do you think this provision is a good idea or should the Supreme Court have more control over its own docket and hear these cases on a discretionary basis?

Justice Edmunds: Right now I don't see any compelling reason for a change. Our caseload is manageable. There are awfully good judges on the court of appeals, and when they don't agree it's not a bad idea for another court to take a look at what they're fighting about. If it is an issue that we can agree on pretty easily then a *per curiam* opinion is possible. But I have seen many thoughtful opinions balanced by thoughtful dissents, so as long as our caseload remains reasonable I think this provision is okay. And remember, even with the right to appeal if there is a dissent, the lawyers don't have to bring it over here. They can simply choose to accept the court of appeals' result.

Fowler: There was a time when the law reviews of our state's law schools were read and cited by the Supreme Court, but in recent years these law reviews are rarely cited in Supreme Court opinions. Do you subscribe to or read our state's law schools' law reviews?

Justice Edmunds: I subscribe to the Georgetown Criminal Law Review and get the UNC and Central Law Reviews in my chambers. I don't regularly read them, but, Tom, citing articles may just be a matter of court culture. Unless a law review article is nearly dead on-point for something I'm interested in or working on, after about the third page I've often lost interest. My eyes glaze over.

Fowler: Me too. [both laugh] Although former Chief Justice Mitchell said, in *State v. Barnes*, that nothing is settled under the doctrine of *stare decisis* until it is settled right, isn't it often the case that it is better for a legal issue to be finally decided than decided right? I'm thinking of *State v. Haselden* [357 N.C. 1, 577 S.E.2d 594 (2003)] in which the Court addressed the appropriateness of Biblical references in closing arguments. My reading of *Haselden*—which included a concurring and a dissenting opinion—is that three justices thought Biblical references could be okay depending on the details, that two justices thought that Biblical references are always okay, and that two justices thought that Biblical references were never okay. So after *Haselden* what are trial judges to do when a Biblical reference is made in a closing?

Justice Edmunds: I think *Haselden* puts the burden, not so much on the judge, as on the attorneys. The question there was whether the judge should take the initiative to stop an argument, and the Court's internal discussion is revealed by the concurrence and the dissent. Lawyers are often loathe to interrupt each other during closing argument. It's a courtesy they extend to each other. As I read those opinions, if a lawyer feels that the other side has gone over the line, it's the lawyer's responsibility to break in and so bring it to the judge's attention and say, "I think this is an improper argument" and cite the reason why. That's pretty consistent with other areas of the law, that is, if you don't bring it to the judge's attention at trial, you haven't preserved the issue for appeal.

Fowler: But *Haselden* could have established a bright line rule. I think the dissenters were suggesting a bright line rule.

Justice Edmunds: Well, I think you overstate the dissenters' position. We didn't say Biblical references would never be appropriate. We did say there should be a lot of caution in using them. But, as you can tell by reading the three opinions in *Haselden*, there was no possibility of getting a bright line decision in this case.

Fowler: Another question to help out the trial courts. Is the holding in a case, i.e., the part of an opinion that is binding on the lower courts, the facts of the case plus the result—or the rationale for the result as detailed in the opinion?

Justice Edmunds: I recall a case, from before my time on this Court, that came over from the court of appeals where there were three concurring opinions, although at least one was labeled a dissent. Each of these opinions stated a separate reason or rationale to justify the same result. I think the party that lost sought to appeal as a matter of right, claiming these were dissents. But this Court said that the rationale did not matter—it was the result that mattered, at least as far as the right of appeal was concerned. [This case is *Harris v. Maready*, 311 N.C. 536 (1984)] Anyway, that seems consistent with the idea that the holding is the bottom line, that is, the holding is the result. Today, at conference, we were talking about a similar issue. In a case from the 1980's, the opinion said that the process followed by the trial court was wrong—that part is clearly holding. But then the opinion went on to say what the trial court should have done. Was that part of the opinion dicta or holding? There was some disagreement on this question in conference.

Fowler: Recently North Carolina has had several highly publicized post-conviction hearings where capital defendants have had their convictions overturned. In Darryl Hunt's case, he was twice convicted of murder charges even though it was ultimately shown that he was entirely innocent. Yet a jury still found him guilty beyond a reasonable doubt and the Supreme Court found the second trial to be error free. How reliable do you think our judicial system is in determining the truth, and can we conclude that it is reliable enough?

Justice Edmunds: I think that our system is, ultimately, reliable. Having worked both as a prosecutor and as a defense attorney—and I did capital defense work—I know that there will always be aberrant cases. But my experience has been that there are many awfully conscientious prosecutors and awfully conscientious defense lawyers working out there. Now they are not always working together. Sometimes they are at each other's throats. But as long as their competition is carried out fairly, that's the way the system is supposed to work. As long as the rules of litigation are fair and are followed, the justice system works as well as any system can that is run by humans. We want perfection, and cases like Darryl Hunt's remind us how terrible the consequences of a mistake are. The system isn't perfect but its record is … good.

Fowler: I went to law school with Mark Rabil, one of the lawyers who represented Darryl Hunt for these past 20 years or so, and Rabil always said, from the very beginning, that this guy wasn't guilty—and, of course, I had to wonder after Hunt was convicted twice. But then it turns out Rabil was absolutely right about Hunt's innocence.

Justice Edmunds: You know Leon Stanback? Before he was a judge he was a criminal defense lawyer in Greensboro when I was a prosecutor. Leon had a bank robbery case and we ran his guy through a line-up and the bank tellers all picked him out. Leon said give him a lie-detector test and we did. He

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Precedent

BY KIRK S. ZUROSKY

Igby had been charged with murder. At least that's what the letter said that he had received from the Directorate yesterday. He crowded onto the packed commuter tram, and took a seat on a form fitting plastic bench. The doors closed with a pneumatic hiss, and the slow pull of the magnetic rail increased to full power, gently rocking his slight frame. His hands shook as he opened the letter and reread it. There it was again. Igby Smith - you have been charged with murder. This part of the letter was printed in big bold letters like a sweepstakes entry. The fine print, however, was literally a matter of life and death. He had two days to find an attorney, or he would have to face the court system alone. The Directorate reminded him that fleeing the city was impossible, and discouraged such foolish action.

With the identification chips that brought banking, communication, and shopping literally to a person's fingertips, came the ultimate tradeoff. Since the day of his birth, Igby, like all the citizens he shared the tram with, had been implanted with a device that monitored his every movement, vital sign, and general wellbeing. It scanned for cancer, heart disease, and just plain old tooth decay. The only letter Igby had ever gotten from the Directorate before was one warning him of his high cholesterol, and urging him to take preventative measures before he would be summoned to the hospital for treatment. A sick citizen was not a productive citizen. Insuring productivity was one of the prime roles of the Directorate.

Technology had also revolutionized the legal process. The wonder chips had made tracking down criminals as simple as dropping a letter in the mail. If a person chose to ignore the summons of the Directorate, they would quickly be found and brought to justice. No amount of technology would ever eliminate the maniacal, homicidal, or simply deviant elements of society, but the bailbondsman was as archaic an occupation as the chimneysweep.

Igby was troubled by three things as the tram took him deeper into the city. One, he knew he hadn't exactly killed anyone recently. And two, the letter gave him no indication of just whom he was accused of killing. But, as the letter pointed out, if there was a positive, he had only been charged, not detained for sentencing. He looked at his reflection in the window across the tram car. Wispy blond hair tufted out from his balding head like straw off of a scarecrow, framing a too thin face, and a ghastly white complexion befitting his occupation as a computer programmer. It was hardly the countenance of a seasoned

The Results Are In!

In 2004 the Publications Committee of the State Bar sponsored its Second Annual Fiction Writing Competition. Fifteen submissions were received and judged by a panel of five committee members. The first, second, and third place entries follow.

criminal staring back at him. Which brought to mind the final troubling point, the perfect computer brain of the Directorate never made mistakes.

The tram glided to a stop inside an old church that had been converted into a tram station. Igby exited the tram and walked up finely polished hard wood steps to the station lobby. A sign hung from the ceiling welcoming him to Barrister's Row. Igby sighed deeply. He never thought he would have ever had to come to this section of town. Barrister's Row was the city's old historic district that was now inhabited by the city's attorneys and the courthouse. It was the only place to come if you needed legal assistance. And help most assuredly was what Igby needed to face the pending murder charge against him.

Sunlight streamed through the elegant stained glass windows that had been kept in the ancient structure to add ambiance. Igby stepped through a multicolored myriad of light puddles, glancing up with interest at the stained glass designs. The Directorate had reconfigured the stained glass to be devoid of any religious context. Indeed, were it not for the majestic textured ceilings, and the ornate workmanship of the building's moldings, Igby would not have known of the building's prior use. The Directorate broadcast their intent to keep church and state separate in sometimes subtle ways.

The station teemed with people scurrying to catch the tram, or racing for court dates. The Directorate levied a high fine on those late for court—presumed guilt. He had made appointments with several attorneys that purported to specialize in criminal defense. He couldn't get past the fact that he was a criminal. He corrected himself—an accused criminal. In the streamlined logic driven world of the Directorate, the need for legal help carried a certain stigma. The Directorate discouraged conflict. Conflict was a precursor to chaos. Chaos had all been eliminated with technology. The city was a smooth running machine controlled by the all-knowing, all powerful brain of the Directorate. When crime did occur it was dealt with swiftly. If a person needed legal help they were contributing to the chaos. Igby looked down at his quivering hands. That was him—Igby Smith, instrument of chaos.

His musings had left him distracted and he failed to notice a cleaning technician, pushing a broom across the smooth flooring. Igby walked headlong into the white jumpsuited worker, and crashed to the floor in a heap. He rubbed his chin gingerly, feeling like he had just run into a brick wall. A hand made entirely of a smooth golden material appeared in front of his face. "Are you alright, sir?" a melodic voice intoned. "Can I help you to your feet?"

Igby shook his head to clear the cobwebs. Still sitting on the floor he looked up into a face that shone with the same golden hue as the hand. Unblinking black eyes stared back at him. "Sir, would you like me to summon medical assistance?" the golden man said.

The golden man was a Bemian. Igby had not had much contact with Bemians. Indeed, this was the first time he had ever been face to face with one. Bemians were bioengineered humanoids, created just before the Directorate took control. They were the result of the combination of genetic engineering and artificial intelligence. Their positronic brains were identical in every way to humans except for the fact they were manufactured by man not Mother Nature. Those brains were housed in bodies that were a mix of biological matter and metallic appearing carbon fibers. Bemians were not citizens according to the laws of the Directorate. Indeed, they occupied every menial job society had to offer. The Directorate viewed them as inferior and outdated technology.

Igby took the proffered hand, and was pulled easily to his feet. "I'm okay, thank you," he said. Bemians were known for their politeness in spite of what the citizens of the Directorate usually dished out to them. Bemians were referred to commonly and derisively as Bots, Robos, or the ever popular Goldies.

A heavyset man in identical white coveralls to the Bemian ran up to them. "Citizen," he puffed, trying to catch his breath. "I'm the supervisor here. I saw everything. Are you alright?" The man had pulled a handkerchief from his pocket and was wiping his face as he spoke. He glared angrily at the Bemian.

"It was my fault," Igby replied. "I wasn't watching where I was going." He looked at the Bemian as he spoke. The golden man took no notice of his explanation, but stood motionless, dark eyes revealing nothing.

Igby could sense the supervisor was disappointed by his answer. Spit flew in all directions from his massive jowls as the supervisor turned toward the Bemian. "You damn Goldies are always screwing up," he screamed. "One more complaint, and…"

Igby placed a hand on the supervisor's shoulder, who whirled to face him. Igby stepped back to create some space between them. "I haven't lodged a complaint," he said. "And like I just told you, I walked into this man."

"He ain't a man. He's a Bot!" The supervisor stormed off, kicking the Bemian's broom halfway across the station.

Igby shook his head in disbelief. "Can you believe that guy?" he said. "Maybe I should talk to *his* supervisor."

The Bemian's expression changed from one of disinterest to one of concern. "Please don't do that, citizen," he pleaded.

"Why, that guy was a jerk. He can't treat people that way."

"Please, citizen."

Igby looked into those dark eyes, wondering what could inspire such fear. "Alright," he said. "I guess I have bigger problems right now anyway. Sorry about the collision."

The Bemian nodded clearly wanting to get as far away from Igby as possible. "If you require any further assistance, just contact our central router." With that the golden man retrieved his broom and continued on his way, shining the floor as he went.

"Thank you, I will," Igby replied.

He exited the tram station, stepping out onto the cobblestone streets that gave Barrister's Row its character. The entire district was retrofitted to seem like a person was stepping into the far past, when the reality was a visit to Barrister's Row usually meant everything to one's future. In the distance, the many stone spires of the courthouse rose toward the sky, cradling a bell tower in between their pointed fingers. The bell pealed once and was silent, marking one o'clock. The attorneys Igby was here to see were surely back from their lunch hours by now.

He started down the street, noting with keen interest that many of the attorneys he passed wore white powdered wigs as a badge to honor those barristers that had come before them. Igby stopped in front of an ornately decorated brownstone. A gold statue of an eagle with wings spread wide

perched over the doorway. An embossed gold plate next to the door read "The Justice Building." He sighed deeply. He was looking for justice. And hope. And redemption.

Igby climbed the steps and entered the lobby. Perched on the reception desk was a two way video screen on which his prospective attorney's secretary was displayed. She glanced up as he approached the screen. "Can I help you?"

Igby swallowed the large dry lump in his throat, and coughed nervously. "I'm here to see Tate Phillips."

"Oh yes, his one o'clock appointment," she said. "Igby Smith—charged with murder."

Igby jumped as her voice echoed loudly around the spacious lobby. He looked around quickly, growing agitated that this girl had trumpeted his private business into the public domain for all to hear and judge. He quickly realized that he was alone in the lobby. He turned back to the view screen. "That's me," he said, failing in his mind to erase all traces of shame from his voice.

"I need to certify you," she said. "Place your hand in the scanner on the right side of the desk."

"Certify me for what?" Igby asked, as he placed his hand in the scanner.

"Just a routine procedure," she answered. "Hang on just a minute." She stared at her monitor for a few seconds.

"Mr. Phillips is not going to be able to meet with you," she said. "It seems they forgot to do a credit screening when you contacted our office. Your credit base doesn't meet Mr. Phillips' guidelines for taking on your case. And it's not even close enough where I could try to talk to the business manager for you."

Igby stared at her in disbelief. Phillip's name had been given to him by one of his coworkers. Now there was even more bad news. He was evidently the lowest paid employee in his department. "I see," he said, turning to leave the building.

"Have a nice day," she called after him.

"Right," he answered, knowing that was not the remotest of possibilities.

A few minutes later he found himself in another ornate law office. A few seconds later he was back on the street with another pecuniary rejection. Justice apparently came at a high price. This process repeated itself twice more, and Igby realized in abject horror that there was only one more attorney on his appointment list. He quickly found the address of his last prospective counselor. The building he found himself in front of was less than impressive. The outside of the building was entirely covered in a dirty white finish that looked every bit like the cheap stucco it was. He placed his hand on the wall, and was dismayed to see a piece of the stucco come off in his hand. A planter in front of the door was heavily stained with mold and grime, and upon closer inspection held a nauseating bouquet of cigarette butts. Igby paused with his hand on the door. He sighed. There weren't any other choices for him to consider. He had to find help, or he was surely doomed to a life sentence, or worse.

He entered a lobby whose furniture had seen better days. One couch was so stained he hesitated to walk near it. He glanced around for a receptionist to announce his presence, but saw no one. A short man with a bushy brown mustache came down one of the side hallways. "Igby Smith," he asked, looking down his nose over wire-rimmed spectacles.

"Yes," Igby said, noting the man's rumpled gray suit had more wrinkles in it than an elephant's skin. "That's me. Are you Ernie Harrison?"

"I am. Why don't you come on back to my office and see if we can solve your little problem."

Igby followed Ernie Harrison back down the dark hallway to his office. Off the hallway, he saw a few empty desks and a storage room, but nothing to indicate any signs of life, or legal brilliance. Harrison's office was spartan at best with a large wooden desk, covered with a bevy of loose papers. An old monitor flickered dimly on the credenza behind the desk, the only sign that Harrison had access to the Directorate's court files. Aside from the two threadbare wing chairs in front of the desk, the room was completely devoid of furniture.

Harrison saw Igby's nervous glance at his surroundings. "I run a bare bones operation here," he said. "No fancy holographic computers, or secretaries—no extra overhead."

"I see," Igby replied, not reassured in the slightest.

"Everything I need is right up here," Harrison said, pointing at his head.

"Let's hope so," Igby said. "I'm just desperate enough to tell you that you are the last attorney on my list."

Harrison smiled, revealing a mouthful of yellow tobacco-stained teeth. The planter of nicotine nuggets was apparently his creation. "Here's what I can do for you. It'll clear out your credits of course."

"Of course."

Harrison continued, ignoring Igby's sarcastic tone like a true professional. "You have no record, correct? You, no offense, are not the most intimidating individual. I can probably get us a plea hearing in front of Judge Banks. He'll give you 30, well, 40 max -"

"What do you mean 30," Igby exclaimed. "You don't mean years, do you?"

"Now, Mr. Smith. Can I call you Igby? Murder is a serious charge. The court system is not to be trifled with. If you go to trial they could execute you just as soon as they would send you to the prison moons. There is a good chance you might even serve your time here on Earth."

Igby could feel the red hot flush of indignant anger, burning his face crimson. "Don't you want to hear what I have to say about the charges? Whether I did it or not? Doesn't that matter?"

Harrison shrugged his shoulders casually. "If that would make you feel better, go ahead. But I'd prefer it if you didn't, since it's kind of awkward for both of us. I can pull up your file if you'd like. But, you should know that it's not going to change my advice, or the result. When's the last time the Directorate has been wrong about something. Or somebody?"

Igby rose to his feet. "Well, it's wrong this time," he said. "I think I need another attorney. One that's not afraid to fight, and fight. For me!" Igby realized that he was pointing maniacally at himself, and quickly dropped his hand to his side.

"Suit yourself. And good luck to you." Harrison smirked. "You are going to need it."

Igby stormed out of the office and onto the street. What was he to do now? He found himself walking slowly back in the direction of the tram station. He randomly stopped at a few law offices, hoping for a miracle. But, every office he stopped at was out of his price range, or simply did not specialize in criminal defense. At the last office he had pleaded loudly and rudely for their help, but all he received for his trou-

bles was an escort to the door. The tram station appeared in the distance. He had no choice but to show up at court tomorrow unrepresented. The bell on top of the courthouse chimed five times, its deep tones mocking his failure as they marked the end of the workday.

As Igby approached the tram station, the Bemian he had encountered earlier in the day came out, and began walking in the opposite direction from where Igby had ventured. Igby fell in behind the Bemian, half jogging and half walking to maintain following distance behind the Bemian's long strides. He glanced back at the tram station, knowing he was probably going to miss the last train back to his quadrant. He realized that he didn't have any idea why he was following the Bemian. What he did know is that he wasn't ready to go home yet.

After about three blocks, the cobblestone streets turned to the normal mundane cement common to the rest of city. Igby noted a few scattered law offices as he walked, all of which were shuttered for the night. In the twilight, he realized that there were quite a few white jumpsuited individuals walking in the same direction as he and the Bemian. A few blocks more and he realized that he was the only nonBemian on the street. Yet, none of the Bemians appeared to take notice of his presence, including the one he was tailing. Igby began to feel a little nervous as the character of the neighborhood became slightly run down, and the black of the night began playing an ever changing melody of eerie tunes.

The Bemian turned off the main thoroughfare, and Igby raced to the corner of a building that would give him a vantage point. He glanced down the street which was deserted save for his golden prey. He inhaled deeply and whipped around the corner. Suddenly, the Bemian stopped in the street, staring down at the ground. Igby molded himself to a nearby doorway, bruising his bony shoulders in the process. Igby would have kept walking and crashed into him again were it not for a glint of moonlight reflecting off the Bemian's golden head. He waited for the Bemian's next move, and looked away for a second at what he hoped was a stray feline caterwauling in a nearby alley. When Igby looked back the Bemian had disappeared. Igby looked frantically up and down the street for any sign of movement, but saw none. A cool breeze wafted his hair, sending foreboding chills down his spine. He swallowed with great difficulty, letting the hardness of the stone doorway lend him some support. He was now very much alone.

Igby walked cautiously out from the doorway. He reached the spot where the Bemian had stood and looked around. From his vantage point, he could now see a set of stone stairs descending from the relative light of the street into utter darkness. He had solved the mystery of the missing Bemian. Did he have the fortitude to continue this mad quest? He set his jaw firmly and headed down the stairs. A man with nothing to lose but a death sentence was a brave man indeed.

The stairs led him to a dimly-lit alleyway which dead-ended at a huge oak door. Twin gas sconces framed the door, throwing warm inviting light into the alley. Igby could see lights were on through an open window. He walked close and read the sign next to the door. In simple block letters it read, "Adam Wunne - Attorney at Law." Maybe the Bemian was to be his golden angel this day, Igby thought.

He pulled on the massive door which opened effortlessly despite its impressive size, and found himself in an elegant lobby. Beautiful tapestries adorned the walls, and the plush carpet massaged his tired feet with its thick fingers as he made his way toward an actual live receptionist. In the center of the lobby was a gold statue of Lady Justice. Igby bent to read the inscription at her feet, "Justice, justice - thou shall pursue." The receptionist looked up at his approach and smiled pleasantly. "Can I help you?" she asked.

Igby scanned her desk for a credit reader and saw none. It was a good omen. "I hope so," he answered. Despair had settled on his soul like a murky fog after the day's events. But, the receptionist's perky red pigtails and pleasant manner were igniting the merest spark of hope. "Does Mr. Wunne handle criminal cases?" he asked. "My credits are limited, but I really need some help."

She smiled reassuringly, seeing his eyes were wet with emotion. "Mr. Wunne is not so concerned with credits as the general populace," she said. "But, you'll have to ask him yourself if he'll handle your case since he screens all his cases personally."

Igby's hope was snuffed out once again. Surely Adam Wunne wouldn't see him today without an appointment, and tomorrow would be too late. "That'll be tomorrow, right?" he asked bracing for the inevitable answer.

She looked at her computer screen. "No, actually that'll be in about five minutes. Why don't you follow me back to one of our conference rooms. Adam will be with you shortly."

"He's sure not like the other attorneys I've met, or shall I say not met today."

She smiled coyly. "You can say that again." She led him to a room, gestured him inside, and closed the door.

Igby looked around the room, marveling at the fine cherry wood paneling and black marble topped conference table. He collapsed into one of the oversized black leather chairs, and closed his eyes for a moment. The door to the room popped open, startling Igby to his feet. In walked a tall man in his late forties with a shock of curly salt and pepper colored hair crowning his noble brow. "Mr. Smith," he said, extending a tanned well-manicured hand. "I'm Adam Wunne." Adam wore a sleek black jacket and a turtleneck and gray dress slacks that fit his large frame like a second skin.

Igby took Adam's hand, noting with a wince that despite the baby soft texture of his skin that the man had a grip of steel. "Thank you so much for seeing me at such a late hour Mr. Wunne. It's a miracle that I found you—provided, of course, that you can actually help me."

"Well, let's see your summons letter from the Directorate," Adam replied. Igby fished the letter out of his pocket and placed it in Adam's outstretched hand. Igby's eyes were drawn to the large gold tourmaline ring that rested on Adam's pinky. It rained droplets of gold on the black table as Adam's moving hand caught the overhead light.

Adam scanned the letter with a quick glance. "I'm going to pull up your case file," he said, looking across the table at Igby. "Let's see what we can find out about this charge against you. Are you ready?"

"Yes, I am," Igby replied. He was both elated and terrified at the same moment. He was finally going to find out who he was charged with murdering which was something a person usually knew before any court date. What would the file reveal? After all, the Directorate was infallible. Did he have a split personality that was going

around murdering folks? Maybe he *had* actually committed the crime.

"Up screen," Adam commanded. Above the conference table a green view screen shimmered into existence. "Show file number 1224079, please." Instantly, the screen was filled with words. Igby frowned in disappointment as he realized the screen could not be read from his side of the table. Adam studied intently, quickly processing the data as it streamed across the screen.

"So Mr. Smith, how did you find my office? I'm a little off the beaten path."

Igby wasn't sure how Adam would react to how he found the office. Heck, he wasn't even sure the Bemian had come here since the lobby was empty when he had entered Wunne's office mere moments after the Bemian had disappeared. For a brief instant, he considered concocting some story, but decided that telling the truth was the best way to start off an attorney/client relationship. He would have to be crazy to even have considered lying to his prospective lawyer.

"I followed somebody."

"Really," Adam replied, not taking his eyes off of the screen for a moment. "Who?"

Igby sensed that Adam knew the answer to his question. Just like an attorney to illicit a response that was known to him. He relayed the whole tale to Adam from bumping into the Bemian at the tram station, to his experiences with the other attorneys, and finally to trailing the Bemian to this office.

When he finished speaking Adam looked at him with a hint of amusement illuminating his face. He did not comment on the whereabouts of the Bemian. Instead, he stared intently at something on the view screen. "According to what I'm reading, Igby Smith is the most notorious murderer in the last one hundred years."

"What?"

"In spite of your genteel manner, you are accused of killing Chief Justice Carle."

"I did what?" Igby stammered.

"Now is the time to tell me what you know, Mr. Smith," Adam said. "If you want me to help you, I need to know everything. And don't hold out on me. What can you tell me about the murder of the Chief Justice?"

"Mr. Wunne, I can't tell you anything."

Adam sighed deeply. "I was afraid of that—they are probably going to have your brain diced into a thousand pieces by tomorrow afternoon searching for all of the split personalities."

"I can't tell you anything because I'm innocent." Igby hung his head on his chest, staring down at the table.

"Igby, Igby—don't you know the Directorate doesn't make mistakes? It is never wrong."

Igby looked up at Adam. "Well, it's wrong this time."

Adam smiled back at Igby. "You are absolutely correct."

Igby's mouth hung open in disbelief. "I am?"

"Close your mouth, you look like you're trying to catch some flies," Adam smirked. "You are Igby Daniels Smith, correct?"

"Yeah."

"The murderer of the Chief Justice is Igby Daniel Smith. To think two sets of parents would give a name as odd, no offense, as Igby to two such diverse offspring. Igby Daniel Smith escaped from one of the prison moons and came back for revenge on the Chief Justice. He has managed to kill the Chief Justice. But, Directorate apparently can't find him, so it selected the next best thing—you!"

"But, if you didn't find that little glitch," Igby said, "what would have happened to me tomorrow?"

"I believe the proper legal term would be 'dead as a duck.' So you still think the Directorate is infallible?"

"I think someone needs to reboot its circuits. How many other 'mistakes' has it made?"

"There is a first time for everything. And this is the first time I've ever seen the Directorate err," Adam said. "And I've been around for quite a while. Down screen." The viewscreen faded out with a small hiss.

"Adam, what if the Directorate's mistake was intentional?"

Adam pursed his lips in thought. "Ah, so you think the Directorate was gambling on you not finding representation. The Directorate had to find the killer of the Chief Justice, otherwise it would be failing in its central purpose. It does have to maintain order by whatever means necessary."

Igby swallowed the hard lump in his throat as his nimble brain brought forth another kernel of wisdom. "The Directorate is going to see us as a challenge to its order, and do what it can to get rid of us, right? No lawyer would take this case not because of my credits, but because of the ramifications."

Adam smiled. "Another interesting theory," he said. "You may be right. But, it really doesn't matter if that is the case." He rose from the table and walked over to a bookshelf against the far wall. He pulled a crystal decanter from one shelf, plucked three glasses from another, and returned to the table.

Igby watched as Adam carefully poured three glasses of amber colored fluid. "Why do you want to help me Adam when it will ruin you?"

"Taking your case is not going to ruin me," Adam said. "In fact, it may do just the opposite. As a lawyer, my credo is to help others and effect positive social change. For the better part of my career, I've done the former. The power of the Directorate has made it near impossible to do the latter—until now."

"How so?"

"With the murder of the Chief Justice, the Directorate itself will stand in as the judge in your case and all others afterwards. Each decided case serves as binding precedent for those that follow. Just so happens I also represent the party whose case follows yours."

Igby nodded his head in understanding. "My case will give you precedent that the Directorate is capable of error."

"With all due respect to your conspiracy theory, its programming is theoretically incapable of duplicity," Adam said. "Thus, it will have to admit error in your case." He set down the decanter and handed a glass to Igby, and took another in his hand.

Igby eyed the third glass still remaining on the table. "What's your next case about?" he asked.

There was a knock at the door. Igby froze convinced the Directorate had eavesdropped on their conversation and had decided to convict him without the benefit of a trial. Into the conference room strode the Bemian he had trailed to Adam's office. He was now impeccably dressed in a brown three piece suit. It was a far cry from the white coveralls of earlier today.

"Igby, I'd like you to meet Solomon Seven," Adam said, handing the remaining glass to the Bemian. "His case will follow yours tomorrow."

"Citizen," Solomon said, inclining his

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Alice Buckthorne Misses Her Target

BY BARR K. SHUSTER

If the editor of the law school's alumni newsletter had a better sense of humor, she might have published Billy Lovett's recent submission to "Class Notes," in its entirety.

"I am now an associate with the law firm of Beckwith Mills Ringer & Nunnallee," wrote Billy. "I won the job in a poker game."

With a flourish of her red pen, the editor excised the seemingly flippant remark about the card game. She did not realize that this information might have explained to Billy's disbelieving law school professors and classmates how he landed a position at one of Raleigh's most prestigious law firms.

The editor's skepticism was understandable. In deed, even among those who have heard the story, there is some speculation whether the card game was the real reason Billy was hired.

What is undisputed is that shortly after receiving notice of passing the July bar exam, Billy decided to take a short holiday at the beach. Even more than law school, summer bar review had hampered his fishing schedule on the coast. Given Billy's employment situation, embarking on a serious job hunt would have been a more appropriate use of his time than soaking a fishing line at the beach. But the king mackerel were running, and Heaven and Earth could wait, he figured.

So Billy booked a space on a charter boat in Wrightsville Beach. He loaded his tackle and cooler and headed east in the rusted 1973 red-and-primer-gray Malibu Classic he'd been fixing up since his sophomore year in college.

The reports of mackerel were accurate. Later in the afternoon, while carrying a 35-pound king mackerel through the marina, he managed to wheedle his way into a poker game that was taking place on the deck of the "*Quasi In Rem*," a 65-foot sport fishing boat owned by one Travis Kendall, a senior partner at Beckwith Mills Ringer & Nunnallee. Like many yacht owners, Travis liked the *idea* of the ocean, more than its reality—rolling swells, slippery decks, and throwing up over the gunwale. Thus, the "*Quasi In Rem*" spent most of its time tied to an expensive slip, where Travis hosted his guests, which was soon to include Billy.

A large king mackerel is as good a conversation starter as a baby, a puppy, or even a black eye. The cigar-chewing huddle of middle-aged doctors, attorneys, judges, and businessmen was in a sufficiently convivial mood to offer a sunburned, unemployed, young attorney—as it were—a seat at the table. Favoring Billy's inclusion in the game was a stainless steel barbecue attached to the stern rail. There is no better eating than grilled fresh king mackerel, and Billy dressed the fish and cut it into steaks in short order.

The poker game continued well into the night, and Travis found himself staring at a promising hand—a full house, queens and kings. As the other players folded their cards, refreshed drinks, and nibbled at the seared remains of the mackerel, Travis and Billy had become engaged in a fierce betting war, driving up a rather large pot.

The source of Billy's income was never entirely apparent; but he rarely left his home—a dilapidated Victorian bungalow in downtown Raleigh, which he rented with four other young lawyers who graduated in the bottom 90% of their class—without at least $200 in cash. The money was for "unforeseen opportunities," his euphemism for gambling. Ironically, Travis—whose success as a trial lawyer and his inheritance of a family textile fortune was well known among the well-heeled in Eastern North Carolina—had left his big wad of poker play money in an argyle sock in his dresser at home that morning when he crept out of his marital bed under cover of darkness. Travis turned to one of his cronies for a short-term loan.

In a reckless Faustian flash of inspiration, Billy interjected and suggested that Travis place an associate's position with Beckwith Mills Ringer & Nunnallee on the table as *quid pro quo* for his most recent raise of the pot. The suspense of all conversation made Billy regret the comment; however, he was relieved to learn that the silence was more a result of tired and aging gray matter trying to process the comment, than his impertinence. A split second later, his

proposal was greeted with raucous laughter that ricocheted through the sleeping harbor.

Punchy from lack of sleep, cigar smoke, and single-malt scotch, Travis's cohorts howled, and taunted him to accept the offer. Travis, one of the brightest legal minds in the state, was either tipsy, overconfident in his hand, or displaying bravado for the benefit of his buddies. But he took up Billy on the bet.

And so the question remains whether that poker hand was the real reason Billy took his place among a group of Ivy League graduates, class valedictorians, and future appellate judges. When he offered the position to Billy, Travis told him that he valued his sharp wit and congeniality. He graciously accepted the position and thanked Travis for the compliment. Still, throughout his life, he often wondered how his life would have turned out if four of a kind did not always beat a full house.

Not Everyone Liked Billy, Though

The questionable circumstances surrounding Billy's hiring did nothing to endear himself to at least one properly qualified attorney at the firm. Hiring Billy boiled the blue blood of Todd Lincoln, the youngest partner of Beckwith Mills Ringer & Nunnallee, who in a private conversation in the hallway referred to Billy as "Travis's ne'er-do-well apprentice."

The stinging barb was relayed to Billy by Todd's paralegal, who overheard the insult on her way back from the copy machine. When Billy heard this hearsay remark in the firm kitchen, witnesses said he spewed Starbucks out both nostrils and had to change his shirt and tie on the way to court for a motion hearing.

Todd's wrath toward Billy festered. Billy did little to inflame it, but frankly, he did nothing to mitigate it. Two weeks later, Billy met a motorcycle aficionado named Rose who was working a coin toss booth at the state fair, at which Billy was unsuccessfully trying to win a Sponge Bob Square Pants doll for his niece in tow.

Rose told Billy that her husband had been struck and killed earlier that month in Carrboro by an organic vegetables distributor truck, when the driver dropped his wheat grass smoothie on his lap and lost control of the vehicle. Rose's late husband was parked on the side of the road on his Harley-Davidson Fat Boy motorcycle, reading "Communist Manifesto," at the moment of his untimely departure.

Rose confided in Billy that the irony of the situation was not lost on her, and that the organic food distributor's insurer offered her $5,000 to settle the matter. Should she hold out for more money, she asked?

Billy listened patiently. "Well, I'm no Johnny Edwards, but it seems to me that there's causation and damages out the wazoo," he said.

The following Monday, Billy presented Rose and her case to the firm, where two senior partners reviewed the facts, and solemnly offered their condolences to the widow, while desperately trying to hide their delight that Billy had brought them the equivalent of a winning lottery ticket.

As it turned out, Rose chose to settle the matter quickly and without sentiment for much more money than was initially offered to her, but probably less than she would have received at trial. She told Billy she had planned to leave her husband anyway and considered even $5,000 a windfall. But she was still grateful for her share of the $650,000, and gave Billy a Sponge Bob doll and an inappropriately long kiss at the disbursement conference.

With the matter settled and the proceeds disbursed, Travis started calling Billy "Rainmaker," which just made Todd more resentful. Travis also convinced the firm to give Billy a handsome bonus, against Todd's objections, of course.

Billy took the entire bonus to a local car dealer, and plunked it down as a sizable first payment on a silver Porsche Boxster, slightly used. He chose a vanity license plate that read NRDOWL. It took Todd, who graduated second in his class at Yale, two days to decode it and appreciate its context. He was not amused.

"Nice wheels, Dude!" said Robert, a prematurely balding estate planning and taxation specialist at the firm, admiring Billy's recently acquired sports car in the parking garage. Although even Billy did not realize this, Robert was secretly taking cool lessons from Billy, with arguable success.

Robert's admiration for Billy became indelible one afternoon at Chick-Fil-A, when Billy helped him meet the comely restaurant manager. As far as Robert was concerned, a polo shirt and khaki chinos never looked better, and he had been waxing poetic about her for weeks. Billy grew tired of hearing how Robert planned to ask her out "one of these days," and decided to take matters into his hands, and put the issue to rest once and for all.

As Robert told the story to an informal assembly of interested associates, "Billy just walked straight up to her and said, 'Miss, there are only two sure things in life—death and taxes—and that fellow over there has them both covered. His name is Robert and you ought to get to know him while you're both young."

Robert only dated the young woman twice, but he was eternally grateful to Billy, if only for the "death and taxes" line, which he used enthusiastically but fruitlessly on numerous occasions thereafter. In fact, one of the firm's patent attorneys disclosed that Robert approached her to have it trademarked.

And Then There Was C.G. "The Tool" O'Toole

Billy's other detractor at the firm was C.G. O'Toole, one of his law school classmates. In law school, C.G. was known by many of his peers simply as "The Tool." It was not meant with respect.

In fairness to C.G., he was a hard-working student, graduated with honors, and had a reputation for possessing an uncanny ability to know exactly what would be asked on many of the exams. A few of the students tried to warm up to C.G. in an effort to extract this information from him. Mistaking their interest in boosting their class ranking for friendship, C.G. developed what he thought was a clever response: "I'll have to check my crystal ball, and get back to you," which he would always deliver with a contrived wink of the eye. Unfortunately, the whole crystal ball thing gave rise to tasteless comments behind his back, which aren't worth repeating.

It was a mystery to Billy why C.G. did not like him, given they were fellow alumni, and Billy had never done anything or said anything unfriendly to C.G., even in school. But unbeknownst to anyone other than C.G., he resented Billy because Billy had refused to change his name.

You see, C.G. was the initials for Clarence Gomer, the respective names of his departed grandfathers. C.G. never liked either name, and called himself "Chuck" until he was accepted to law school, when

he decided that Chuck O'Toole was not a name fit for a member of the bar, the bench, or, dare say, governor of North Carolina.

Given that at least two famous lawyers he could think of were named Clarence, it would have made sense for C.G. to call himself Clarence O'Toole; however, according to C.G., in his own words, it lacked "babe appeal." As Gomer wasn't exactly a "chick magnet" (another unfortunate term he used frequently) either, he chose C.G. by default.

What irritated C.G. about Billy was that while he struggled with his name, Billy stuck by his boyhood moniker, refusing to adopt his distinguished birth name emblazoned on his diplomas and certificates—James William Lovett III.

Now, that was a suitable name for an attorney, thought C.G. Why, it almost rolled off your tongue! C.G. believed such a fine lawyer name was utterly wasted on Billy.

C.G. was not the only one in the firm who thought Billy should adopt some permutation of his given name. In fact, Travis strongly recommended that Billy become "J. William Lovett III," which he thought was a splendid lawyerly appellation. But Billy stuck with Billy; nothing more, nothing less. It's how he signed his letters and pleadings. "It suits my populist image," said Billy, meaning that calling himself J. William Lovett could only invite a whooping at his favorite redneck biker billiards parlor.

Enter Alice Buckthorne

Now Billy had one other asset at Beckwith Mills Ringer & Nunnallee. He had brought to the firm a client, and none other than Alice Buckthorne, an aging southern belle who was the matriarch of Buckthorne Enterprises, Inc., a multimillion-dollar, privately held conglomerate of dry cleaners, fast-food franchises, billboards, and auto dealerships throughout the Southeast.

Alice was more than a client; she was a *dream* client. She was rich, loyal to the firm, and, best of all, she spent the better part of her days stumbling from one legal calamity to another. It seemed that half of the lawyers in the firm had billed hours working on her matters. But Billy was her favorite lawyer.

Billy met Alice several months after accepting his job with the firm, one Saturday night at a "license checkpoint," the exact location of which is unimportant, around the Christmas holidays. The police were in the process of administering a sobriety test on the shoulder of the road to both Billy and Alice.

As the officers would discover, Billy was stone cold sober. But they put him through the paces because when they stopped him he was wearing plastic reindeer antlers and a flashing red nose to celebrate the season. The cops just figured he was loaded.

In fact, Billy made a decision to avoid all controlled substances during his freshman year in college, when after getting a C- in calculus, he became convinced he had undiagnosed attention deficit disorder, and decided his brain was taxed enough without adding booze and drugs to the mix. (He also changed his major from civil engineering to psychology, on or about that time.)

Trying to make light of the situation, Billy told the law enforcement agents, "I have no hard feelings, officers. I chalk it up to just an unfortunate case of reindeer profiling." The comment was not well-received.

Alice, on the other hand, was quite inebriated that evening after imbibing too many infused martinis at a junior league charity event. She forgot the alphabet after Q, made untoward comments about the arresting officer's rear end, and registered a blood alcohol content of .10 on the breath analyzer. She was arrested with little ceremony or delay.

If Billy had not pursued a legal career, he would have been a fine real estate agent or even a used-car salesman. While Alice was being helped into the patrol car, Billy slipped one of his freshly printed business cards into her hand. Soon Billy had his first client.

"This is not a solicitation for legal services," he told her, "but if you need advice, I feel your pain." In retrospect, he thought he might have violated at least one rule of professional conduct.

Alice called him the following week, believing that Billy also had a drinking problem, and would be a sympathetic legal representative. "I need a lawyer who understands," were her words, which stuck in his mind.

Later in life when Billy started his own personal injury firm, he would be known to nearly everyone in the greater Piedmont who watched television after 2 a.m. as "The Lawyer Who Understands." At least until the state bar requested that he discontinue the commercial.

What cinched his relationship with Alice Buckthorne was an indirect result of Billy's legal inexperience. He did not know that perhaps the best course of action for someone who blew an undisputed .10 on her first DWI charge would to be to plead guilty, and beg the court for limited driving privileges.

If Billy had made such a recommendation, the firm would have gotten a respectable fee for neatly completing and filing a series of forms and making a court appearance or two. And most likely Alice would have continued to send her legal matters to the venerable Durham law firm she had been using since she received her first speeding ticket as a Hope Valley debutante around the time of the first moon walk.

But as a result of Billy's naiveté, he convinced her to fight the charges after he discovered a minor and highly technical procedural violation in the manner in which the checkpoint was established. He successfully argued that the arresting department's paperwork deficiencies rendered the arrest constitutionally invalid, and somehow convinced the judge to dismiss the matter. Whether or not justice was served is an issue for another story; however, from then on, Billy was Alice's attorney, which by association made Beckwith Mills Ringer & Nunnallee Alice's law firm.

Billy was guest of honor at a small post-trial celebratory party hosted by Alice at her sprawling Chapel Hill estate. Drunk driving is a serious matter, and in his speech, Billy solemnly concluded with the remark, "Alice, you are a lucky woman. I want you to promise me that you will never sit behind the wheel of a car after you have been drinking."

At this point, Alice had adjourned to the kitchen, but had heard every word and inflection through the pass-through. In an emotional epiphany, over the whirring of a blender in which she was preparing a batch of frozen melon daiquiris, she raised her trembling right hand and tearfully agreed. "Oh Billy, I swear!"

In fact, Alice did honor her word.

Shortly thereafter, she gave up driving completely. She bought a limousine, hired a chauffeur, and never stepped behind the wheel after she had been drinking. Actually, she never stepped behind the wheel again, period. That was a good thing.

The Client Meeting

Alice seemed to be quite sober and lucid when she showed up at Beckwith Mills Ringer & Nunnallee one morning in early April. Billy and C.G. were assigned to meet with her regarding several matters. These included a summary ejectment action against the lessee of one of her commercial properties in a rundown section of Greensboro, and defending a suit brought by the department of transportation to remove two of her billboards on Highway 85.

Typically, C.G. was tense any time he had to work directly with Billy. But today he was in a good mood. It was a beautiful spring day, and on the prior evening he had met Courtney, an earnest, brilliant, and attractive immigration law associate, at a young lawyers meeting.

Courtney had given C.G. her telephone number. A smart and personable woman with grace and style had expressed an interest in him. It was a first, and he was ecstatic. She spoke Italian.

If C.G. did indeed have a crystal ball, as he professed in law school, he would have foreseen that he and Courtney would date for 18 months, and after a short engagement, get married at her parents' home in Rocky Mount. After 13 years of nuptial union and three children, C.G. would effectively ruin his marriage and life in the arms of a much younger paramour (who on that beautiful spring day was busy organizing an Earth Day celebration at the junior high school she was attending). Courtney would hire a fine domestic law attorney of diminutive stature, known informally to her colleagues as "La Petite Pit Bull." After the bloodshed, C.G. would convert to inactive status with the bar for 19 months. He would resurface later, a humbled man with a pony tail, and repeat his story on numerous occasions to his therapist and to attorneys fulfilling their mandatory substance abuse and mental health CLE credits.

But I Digress

Alice recently had another round of cosmetic surgery, and her skin had been drawn so tight around her eyes that she appeared slightly Eskimo, which she was not.

"Stop staring at my face, young man," she scolded C.G., across the conference table. C.G. lacked some social grace in these matters. "The skin will stretch out in a couple weeks," she added, as if she were referring to a new pair of shoes.

Billy entered the conference room and observed the discourse between C.G. and Alice. "It makes you look rather exotic, Alice," said Billy. She smiled approvingly.

The two young attorneys discussed Alice's matters accurately and prosaically, while she filed a rough fingernail and pretended to listen. Alice fidgeted in her seat. "I have one more thing to ask y'all about. But I need to make sure that it won't leave this room," she said.

Both attorneys glanced at each other and sat up a little straighter. "Well, Alice, there is such a thing as the attorney-client privilege," said Billy. He was a little nervous at this point. It sounded a little more serious than a summary ejectment matter.

She cleared her throat for effect. "I think I shot my neighbor's pig."

Billy laughed. "You really had me going, Alice. You live in Chapel Hill. Who keeps hogs in your neighborhood?"

"No, no, no!" she said. "Not the kind you eat. It's one of those fancy pet hogs, with the beer belly."

"You shot a pot belly pig?" asked C.G., with a look on his face as if he had witnessed a train wreck. You never can sum up anyone without knowing his or her complete history. And for all his difficulties with his own kind, C.G. was an ardent animal lover. He owned a pot bellied pig as a boy, in addition to a menagerie of rescued kittens, birds, and other small critters. He kept a copy of "All Creatures Great and Small" on his nightstand. In college, he had become active in a little-known California-based animal advocacy organization called SPLAT (The Society for the Prevention of Little Animal Tragedies), its mission "to lessen the incidents of road kill."

He was visibly horrified by Alice's wanton assault on a defenseless pig. When he calmed down, he realized that under the rules of professional conduct, he had a duty to remove himself from further representation of Alice, as he could no longer zealously serve as her advocate. C.G. stewed in his chair.

"What do you mean you *think* you shot it?" asked Billy. "Did you shoot it or not?"

She firmly clasped her hands so that her knuckles blanched, and closed her eyes, as if she were beginning a sermon. "I know I shot *at* it. I'm not sure if I *hit* it. The darn thing scooted back under the fence."

She rustled in her purse for evidence. "Here it is—the weapon," she said, retrieving a snub-nosed .357 magnum Smith & Wesson "Lady" revolver with a pearlescent pink handle.

"Alice, put that back in your purse," said Billy, as Alice waved the gun in the air.

"Don't throw a hissy-fit, Junior, I've got a permit." she said, returning the revolver to its place. Alice paused. "I need to know, can I get in trouble?"

Billy tried to summarize her legal position as succinctly as possible. "Well, yeah, Alice, possibly. I mean, that was a bad thing to do. Let's start with the criminal aspects…they probably have laws in Chapel Hill about discharging a firearm within city limits. Then you've got cruelty to animals…"

"And that's the best you can do for $200 an hour?" she said. "What the heck did they teach you in law school? You need to hear all the facts. That horrible creature was sneaking under the fence at least once a week." She leaned forward, and whispered angrily, "It went number-two in my azaleas!"

"Did anyone see you do it?" asked Billy.

"Heck if I know," she said, searching through her purse again. "Hey, can y'all smoke in here?"

C.G. could no longer hold his tongue. "I'm sorry. I can't represent you anymore!" He stood up and left the room hurriedly.

Alice looked up. "Is he going to tell on me?"

"No, Alice," assured Billy, the absurdity of the situation hitting him all at once. "Please excuse me."

He walked briskly out the room. Billy once read that if you belched, sneezed, coughed, and performed at least one other involuntary bodily function simultaneously your heart would stop. He thought about this as he tried to maintain his professional demeanor as he walked briskly through the halls of the firm trying not to laugh, with his head down, biting his lower lip, and snorting like a dog with a snout full of saw

dust.

C.G. was sitting at his desk, with his face cradled in his hands.

"C.G. you better get back in the conference room before Alice gets you fired."

C.G. ignored him, and broke into the story of his pet pig, the James Herriot novels, and SPLAT.

"Get over it, bud. I had a pet hog once," said Billy, thinking he was being empathetic. "I raised him as a 4-H project, and he died of unnatural causes. You don't see me flipping out."

C.G. looked up at him suspiciously. "What happened to your pet pig?

"We barbecued him for a pig picking at my Uncle Bud's 53rd birthday party. But I missed him real bad for a while."

"Oh, why did I ask?" said C.G., looking at the ceiling. "Leave me alone, Billy. Just leave me alone."

As It Turned Out

Thankfully, Alice's shot did not even graze the pig. But it scared the wits out it. Its owners took the sensitive and rattled creature to the veterinarian to have it evaluated for emotional trauma. Alice's neighbors, the owners of the porcine victim, did witness the assault from their bedroom window and reported her to the local authorities. The same afternoon as her conference with Billy and C.G., Alice was greeted at her front door by an Orange County sheriff deputy, who confiscated her pink-handled Smith & Wesson and revoked her concealed weapon permit, and charged her with several violations of the law. (She did not disclose her possession of a .45 semi automatic handgun or her deer hunting rifle.) Beckwith Mills Ringer & Nunnallee, of course, represented her in the matter.

The next morning Billy read in the *News and Observer* outdoors section that flounder were running inshore. After work, he loaded a couple fishing poles in the Boxster and raced eastward on Highway 40. It was a balmy evening, and he had invited his new best friend Carol Ann, a rising senior volleyball player at State, whom he met at the biker pool hall, to accompany him on the trip.

The top was down, and the cool air smelled like pine straw and Carol Ann's perfume. It was all good. Ahead lay the open highway, flanked by miles of trees swaying against a background of waning cobalt light. Behind him, the low setting sun burned bright orange in the rear view mirror, which Billy all but ignored. ■

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Precedent (cont.)

head. "So nice to see you again."

Igby noticed the Bemian's bearing had changed from submissive to almost regal. Adam and Solomon drank from their glasses and Igby did the same, wincing slightly as the fiery liquid coursed down his throat. "Adam, can you tell me what the case is about," he asked. "If that is alright with you, Solomon."

Adam looked to Solomon who nodded affirmatively. "The law currently prevents Bemians from pursuing all advanced certifications and bars entry into all of the city's professional schools. Solomon is going to challenge that ruling and try to gain entry to law school."

"How does my case help that?" Igby asked. He never knew that laws were in place preventing the educational advancement of Bemians. Rather ignorantly, he had assumed that lower tier jobs were all they were capable of, and desired to do.

"Your case shows error in procedure," Adam said. "Solomon's case, with a little help from a surprise witness, will show the Directorate's law is incorrect on its face. The prevailing information our local bar has gleaned about the Directorate is that two mistakes in consecutive order will put it into permanent system shutdown."

Igby sat silent listening to what days ago would have seemed like utter blasphemy, but now seemed long overdue. The Directorate would have taken his life to preserve order, and now he would be contributing to its demise. "What will happen to the city, Adam," he said. "Won't chaos ensue?"

"Before we put our misguided faith in the Directorate, we governed ourselves. We can and will do so again."

Igby sipped his drink again. "How come you didn't pour a fourth glass?" he asked. "Is the surprise witness meeting us at the courthouse?"

"The restrictions on Bemians entering professional schools, including law schools are based on the Directorate's belief that Bemians are intellectually inferior, and incapable of performing professional vocations," Adam said. "Even though Solomon has earned a perfect score on the law school entrance exam."

"That doesn't show the Directorate was wrong about Bemians being actual lawyers, though," Igby said.

"Right," Adam said. He set down his drink and stepped back from the table. "I'm the surprise witness."

"What!" Igby exclaimed.

"I'm a Bemian," Adam said. "In fact, I was the first Bemian ever born. I predate the Directorate by a mere five years which gave my parents ample time to see the writing on the wall and integrate me into human society."

"No offense to Solomon," Igby said. "But you don't look like a Bemian."

Adam nodded. "Take away the wig and contacts and you still might not be able to tell," he said. "The genetic material that was taken from my parents contained an unexpected mutation. I am an albino. What color you see on my skin is sprayed on."

"So you have been waiting for years for this to happen," Igby said.

"Fifty years of practice and one thousand cases to be exact," Adam replied. "But, I'm not alone. There are others. Bemian and human alike."

"I'm scared," Igby said. "What will our world be like with the Directorate gone?"

"Free," Adam replied. "Gloriously free." ■

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Secret Musings of a Criminal Defense Attorney

By Judge Laurie Hutchins

The jury's out: the 12 empty chairs haunt you. The jurors sit in a guarded room deciding your client's fate. For a month, you've worn a mask on stage for them—professional, courteous, polite. You showed no emotion about the case—the bloody photographs, the coached witnesses, the DA's sly tactics, the Judge's poor rulings, the slow drudgery of the proceedings.

Your client sits beside you at the defense counsel table. Smug. He turns and grins to his homeboys in the audience even though you have instructed him over and over to sit in a quiet and somber manner and not to laugh or joke or send the wrong message. You don't smile—not when your life is at stake. Even with the jurors gone, the rules must be followed.

Attorneys amble by your table to tell you that your cross-examination of the detective was brilliant. Although he squirmed in the witness chair and tried to avoid the question, you finally got him to admit he made a mistake and failed to perform a standard forensic test that could have exonerated your client and proved his innocence. The judge's law clerk tells you your closing argument made juror number 5 cry. You nod, mumble, and accept their congratulations.

The DA comes over, and you stand and shake hands. You both say the other did a fine job and mean it. He returns to his separate corner surrounded by police, detectives, and administrative assistants. They laugh and joke. It's typical gallows humor—things that aren't funny, worse, in fact, are very inappropriate like laughing at the out of date shoes on the corpse. You have to smile at something, or you can't make it through the grim reality of murder.

You don't listen while the bailiffs and the court reporter discuss who will be the jury foreperson: the man wearing the coat and tie or the lady principal? You know they'll call it correctly after decades in the courtroom. Your client is taken in handcuffs to the holding cell in his brown ill-fitting double knit suit that you found in the court wardrobe room soon to be recycled for other defendants. You had it dry cleaned so it no longer smells like the inside of a dog's dirty cage. You know they will feed him the standard issue bologna sandwich crammed in a baggie and a warm carton of milk.

You are alone at the defense counsel table. Books and papers and files are everywhere: chaos. You can't think in complete sentences. You hear but you don't hear. You speak but only a few words when you absolutely have to speak. After four weeks of three hours in the morning and three hours in the afternoon in the courtroom plus endless night and weekend hours in the office, you are spent like a bullet that has been aimed, fired, and shot. Nothing is left. There is nothing you can do; your part is over. With the jury out, you don't know if you hit the mark. When your father talks about combat in WWII and your cousin in Vietnam, you imagine this is what they experience after the battle.

You can't explain it to anyone. If you could, maybe another defense attorney who tried capital murder cases might understand. It's unspoken. Attorneys meet at bars and drink whiskey. They laugh and tell war stories—funny things a witness said, or a lawyer did during a trial. Ha Ha Ha. Attorneys don't cry in their drinks about duty. They take another drink and try to forget it. But you never forget this: you lose this case and your client will die. Untrue for the civil lawyers. If they lose a case, their client pays money. Even if it's a big loss and the client has to pay a million dollars, what's that compared to a jury's verdict of potassium chloride and cardiac arrest while strapped down and chained to a gurney?

Once in a weak moment, you might talk about it. After a six-month trial, you might describe it to your wife. You're spooning in bed in the dark with your chest pressed against her back, your arms around her waist, and your mouth at her ear. You whisper to her: you feel like an enormous yoke of solid steel is on your neck and you can't take the yoke off no matter how hard you try until the verdict comes, win or lose. Win or Lose, your duty is done and you did it as best you could.

When you are first appointed after the killings and begin the work, it's there, small and manageable on your shoulders. You notice a difference in your step; you smile a little less and don't enjoy dinner as much. Then the damning evidence starts to roll in; you review the police reports and speak to the eye-witnesses. You meet regularly with your client at the jail. His mother calls you at home to tell you how to try the case. Your mother reads articles in the newspaper and accosts you at the front door before her coat is off, "how can you represent that murderer?" As your charge becomes more difficult, the weight increases. It happens very slowly over a period of months: you don't even notice it at first.

You sleep less and less. You lie in bed with your eyes wide open and stare at the ceiling or listen to your wife's breathing. You doze off and on. The sun pushes through the blinds and you count each bar of shadowed light on the bed until it's time to get up and start working again on the case. Or, when you do sleep, you have nightmares. Violent. Red.

Finally, after so many nights, you shut out the world completely in a comatose state. You don't remember anything, not even falling asleep, and then the alarm blares you back at 5 a.m.

Your relationships suffer, and you promise to reintroduce yourself to your wife after the trial. You miss your daughter's Halloween sing at school and son's soccer games. The dog doesn't even bring the ball to you anymore. You've forgotten your locker combination at the Y. You wash your hair a second time in the shower because you can't remember whether you washed it the first time.

The yoke tightens on the first day of the trial as the jurors take their numbered seats in the box. You feel it dig into the skin around your neck and shoulders. When the judge welcomes the jurors and introduces you and the DA, you, the very experienced trial attorney, shoot the jurors a carefree smile. You wear your new gray suit and your lucky tie and give an airy, upbeat "he didn't do it" opening statement. You withstand the firestorm of State's evidence every day, despite each witness adding a few more pounds of pressure.

Then, it's your turn to put on evidence for the defendant. Your presentation will not be ponderous and monotonous like the DAs; it will be buoyant, brilliant, and entertaining. Easy, right? Your closing argument only has to convince the jurors that your boy didn't break into the house, rape and beat the mother to the point of death, kill the father and the children, despite the positive fingerprints and DNA results.

The jury's out. You sit alone at the defense counsel table. Your thoughts skip from one subject to the next like bursts of machine gun fire. First, you have "the doubts"—about what you should have said on close, what you forgot to ask a witness, and whether you should have put the defendant on the stand. You debate with yourself on the positives and the negatives until you are bored and can't make any further points on either side. You check your watch: one hour.

You think about the odds of winning, about how many attorneys really beat murder one. It'd be easier to win the lottery or become president of the United States. You remind yourself it has happened at least twice in this county since you've been practicing law. You believe. You believe harder. You remember why you went to law school.

Then, you imagine your client on Death Row. You see him, just a lanky 19 year old with no visible beard and acne, praying with the prison Chaplain and making a final statement to the onlookers. You see the doctor fill the syringe. You see his mother in her Sunday dress and hat clutching the family Bible and praying. You close your eyes as the needle penetrates his skin.

You switch tracks to count how many clients you have on death row, the exact number of your personal failures with their names on view on the State Department of Correction website. Your ego is on the line: you have an insatiable desire to win. The verdict is a double yoke, but you know he will die and you will live and try another one. You never forget he will die. You unconsciously mop the sweat from your forehead with your handkerchief. You check your watch: three hours.

You pace the courtroom by the windows and make your own aisle 24 steps up and 24 back; you ignore the media and the crowds; you hate them all now. Everyone leaves you alone because of the intense look on your face. You don't smoke, but you smoke a cigarette. You look out the window and remember the other world: A woman carrying a briefcase rushes to a meeting; a serviceman makes a delivery of Cokes to an office building; a shop owner sweeps the sidewalk; a news stand sells papers with your case on the front page: "Life or Death?" three inches high. A local TV station truck with a giant antenna is parked on the grass by a no parking sign.

You sit alone at the defense counsel table. You stare at a file involving your next criminal case. Your eyes cannot focus on the words but you stare at it to look busy. You shuffle some papers; you know better than to try to make any important decisions. You stare at the plaid pattern woven into your gray suit and count the squares. You finger your pen. You are possessed: What is the jury talking about? Did they believe the eyewitness? Did they notice that detail in the photo? Who is the foreman? How many votes have they taken? What's the split? You look at your watch: Five hours.

Your eyes jerk up every time a person enters the courtroom—it may be the clerk with verdict sheet. It's just an attorney; it's just an assistant district attorney; it's just an administrative assistant; it's just a spectator who wants to see what a murderer looks like. You ignore the reporters who look eagerly at you wanting to approach for an interview. Your stomach growls, but you can't eat or you'll vomit. You stare at the 12 empty seats.

You pass the jury box; your hand strokes the dark mahogany of the rail separating them from the rest of the courtroom. You drink at the water fountain in the back hall by the judge's chamber. You look at her, robe off, seated behind her desk, talking on the phone about plans for a weekend trip. Inside their private chamber, you hear the jurors' muffled voices and laughter. The bailiff reads a magazine in a chair in front of the door. You ponder the folklore of the seasoned trial attorneys: If the jury is out a long period does it favor acquittal or conviction?

Rat-a-tat-tat come the sharp successive knocks on the jury door. You jump. You hear, "Verdict's in, Verdict's in" pass through the multitudes in the hallways and courtroom. Reporters run to get a seat in the front. You sit in your chair. Your client sits beside you again. You brace yourself. You fold your hands. You see your client's fingers clutching the table: his first and only trial. Not yours. The 12 jurors file in two at a time and take their numbered seats. You search their faces for clues. If they look you in the eye, does it mean acquittal? If they look away, does it mean conviction?

You feel an adrenaline rush as countless eyes fall on your client and you to see your reaction to the verdict. You look straight ahead. You will have no reaction. You smell the tension, the silence, stretched across the courtroom. Your mouth is dry. You see the bailiff move in long slow strokes like a man walking underwater towards the judge with the verdict sheet. The judge reads to herself the jurors' answers to the questions. Without expression, she hands the verdict sheet to the clerk.

This is it. The clerk reads the verdict. The words crack and carry in the air like thunder breaks and rolls across the sky.

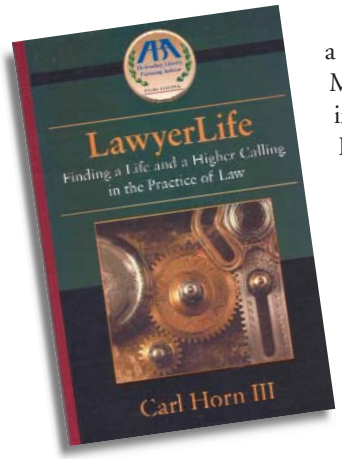
You hear the words.

The yoke explodes into shiny silver pieces and evaporates into oblivion. ■

Laurie L. Hutchins is a district court judge in Forsyth county. Prior to taking the bench she had a general practice and regrets she never tried a capital case. She received her juris doctorate at Wake Forest School of Law in 1983. She has written a novel, Going Drowning, based on a true story about her grandfather and criminal attorney Fred S. Hutchins Sr. and his successful defense of a mother who killed her children in Winston Salem in 1956. Despite her agent's best efforts, it is unpublished and sits in her bottom desk drawer gathering dust.

Lawyer Life: Finding a Life and a Higher Calling in the Practice of Law

By Carl Horn III—Reviewed by Edward T. Hinson Jr.



Carl Horn III, a United States Magistrate Judge in the Charlotte Division of the United States District Court for the Western District of North Carolina, has written a book published by the ABA which ought to be required reading for young lawyers starting the practice of law. And even the most sanguine and comfortable members of our profession would benefit from consideration of what Horn has to say about life and higher calling in the practice of law. In fact, the book could serve as a text for the professionalism initiative underway through the work of Mel Wright and the Chief Justice's Commission on Professionalism.

The book is relatively short (175 pages) and well organized, with a good mix of humor and inspiration. Judge Horn has researched his subject well, surveying the literature about lawyer life. His sources range widely—from Sir Thomas More, Samuel Johnson, and Alexis de Tocqueville to 20th century "lawyer statesman" Elihu Root. He appears to have read and thought about musings on the state of the legal profession by many of the current day observers from academia and the judiciary. But Judge Horn also adds a personal perspective from a legal career that has included private law practice with mentoring by Joe Grier Jr., one of the deans of the Charlotte Bar, a stint as legal counsel and instructor for Wheaton College, service in the Civil Rights Division of the United States Justice Department, and a term as an assistant United States Attorney in the Western District United States Attorney's Office.

Those who know him speak of Judge Horn's unswerving commitment to his family and his involvement in the lives of his children. He shares some of the personal story, which has fueled his passion for "deep heart connections that take time and priority attention to develop…" Horn has found life and higher calling, and so he speaks not only as one who has surveyed the literature about life in the law, but with experience.

Lawyer Life is divided into two main parts. The beginning is a dissection of the contemporary practice of law with an introductory chapter on law as a higher calling, followed by a discussion of "Troubling Trends," and finally, "Defining the Issues for a Profession 'In Crisis.'" Don't skip over the first section thinking you already know about professional malaise, because scattered throughout the stories of troubling surveys and unhappy lawyers are sources for help. For example, beginning at page 35, Horn has collected names, addresses, phone numbers, and websites of organizations and individuals serving as agents for positive change. The second part of the book, again with three chapters, suggests solutions: Twelve Steps Toward Fulfillment in the Practice of Law; Help Wanted: Law Schools, Firms, and Bar Organizations; and finally, Parting Thoughts: Practicing Law in the New Millennium.

Horn's suggestions for change fall into two major categories: personal choices and "systemic initiatives and reforms." Bar organizations, law schools, law firms, and perhaps even courts, should hear his call for systemic change. All of us can implement individual choices, which include such sensible propositions as setting clear priorities, developing good time management practices, refusing to let technology control your life, and saying no to some clients. I will not give away the entire list. The 12 steps found in Chapter Four are worth the price of the book.

Judge Horn also introduces us to the people who have inspired his search for higher calling: Carl's Uncle Guy Carswell, who summons up Atticus Finch by representing those who could not pay, and by sending other people's children to college; his uncle Judge Richard Emmet, an Alabama Judge with a passion for civil rights; and others who took the time to inspire and mentor. We are thus reminded that there is a role for all of us to pass on whatever we have learned about cultivating a whole life while upholding the best traditions of Bar.

For those looking to rekindle a sagging spirit about law practice, and for all of us who yearn for higher calling both in law and life, Judge Horn has given us a worthwhile, readable, and enjoyable addition to inspirational literature about the calling of life in the law. Buy it and read it: *Lawyer Life, Finding a Life and Higher Calling in the Practice of Law*. It is available through ABA Publishing at 1-800-285-2221 (ask for Product Code 1610024) or by Internet at ababooks.org. ■